

STATE OF MICHIGAN
DEPARTMENT OF COMMUNITY HEALTH
Grants and Purchasing Division
320 South Walnut Street
Lansing, Michigan 48913

CONTRACT NO. 391B3200006
between
THE DEPARTMENT OF COMMUNITY HEALTH
and

NAME & ADDRESS OF VENDOR Michigan Peer Review Organization 22670 Haggarty Road Farmington Hills, MI. 48335		TELEPHONE 248-465-7300
		VENDOR NUMBER/MAIL CODE
		AGENCYCONTACT: Robert Yellan, President/CEO
Contract Administrator: Gregory Rivet, MDCH Grants & Purchasing Division		
Description: Post Payment Hospital Audits		
CONTRACT PERIOD: From: July 1, 2013 To: June 30, 2016		
TERMS <u>Net 30 days</u>		Two (2), one (1) year options to renew
MISCELLANEOUS INFORMATION: The terms and conditions of this Contract, including any applicable information from the vendor's proposal to RPP #391I3200005 dated 4/10/13, are attached. In the event of any conflicts between the specifications, terms and conditions indicated by the State and those indicated by the vendor, those of the State take precedence. Est. Contract Value: \$2,757,500.00		

FOR THE VENDOR:

Firm Name
Authorized Agent Signature
Authorized Agent (Print or Type)
Date

FOR THE STATE:

Signature Kristi Broessel
Name Director, Grants and Purchasing Division Michigan Department of Community Health
Title
Date

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DEFINITIONS

24x7x365 means 24 hours a day, seven days a week, and 365 days a year (including the 366th day in a leap year).

Additional Service means any Services within the scope of the Contract, but not specifically provided under any Statement of Work.

Audit Period means the seven year period following Contractor's provision of any work under the Contract.

Contractor(s) are those companies that submit a proposal in response to this RFP.

Business Day means any day other than a Saturday, Sunday or State-recognized legal holiday from 8:00am EST through 5:00pm EST unless otherwise stated.

Blanket Purchase Order is an alternate term for Contract and is used in the Plan Sponsors' computer system.

CCI means Contract Compliance Inspector.

Days means calendar days unless otherwise specified.

Deleted – N/A means that section is not applicable or included in this RFP. This is used as a placeholder to maintain consistent numbering.

Deliverable means physical goods and/or services required or identified in a Statement of Work.

DTMB means the Michigan Department of Technology Management and Budget.

Environmentally Preferable Products means a product or service that has a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. Such products or services may include, but are not limited to: those which contain recycled content, minimize waste, conserve energy or water, and reduce the amount of toxics either disposed of or consumed.

Hazardous Material means any material defined as hazardous under the latest version of federal Emergency Planning and Community Right-to-Know Act of 1986 (including revisions adopted during the term of the Contract).

Incident means any interruption in any function performed for the benefit of a Plan Sponsor.

Key Personnel means any personnel identified in **Section 1.031** as Key Personnel.

New Work means any Services/Deliverables outside the scope of the Contract and not specifically provided under any Statement of Work, such that once added will result in the need to provide the Contractor with additional consideration. "New Work" does not include Additional Service.

Ozone-depleting Substance means any substance the Environmental Protection Agency designates in 40 CFR part 82 as: (1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or (2) Class II, including, but not limited to, hydrochlorofluorocarbons.

Post-Consumer Waste means any product generated by a business or consumer which has served its intended end use; and which has been separated or diverted from solid waste for the purpose of recycling into a usable commodity or product, and which does not include post-industrial waste.

Post-Industrial Waste means industrial by-products which would otherwise go to disposal and wastes generated after completion of a manufacturing process, but does not include internally generated scrap commonly returned to industrial or manufacturing processes.

Recycling means the series of activities by which materials that are no longer useful to the generator are collected, sorted, processed, and converted into raw materials and used in the production of new products. This definition excludes the use of these materials as a fuel substitute or for energy production.

Reuse means using a product or component of municipal solid waste in its original form more than once.

RFP means a Request for Proposal designed to solicit proposals for services.

Services means any function performed for the benefit of the State.



SLA means Service Level Agreement.

Source Reduction means any practice that reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment prior to recycling, energy recovery, treatment, or disposal.

State Location means any physical location where the State performs work. State Location may include state-owned, leased, or rented space.

Subcontractor means a company selected by the Contractor to perform a portion of the Services, but does not include independent contractors engaged by Contractor solely in a staff augmentation role.

Unauthorized Removal means the Contractor's removal of Key Personnel without the prior written consent of the State.

Waste Prevention means source reduction and reuse, but not recycling.

Pollution Prevention means the practice of minimizing the generation of waste at the source and, when wastes cannot be prevented, utilizing environmentally sound on-site or off-site reuse and recycling. The term includes equipment or technology modifications, process or procedure modifications, product reformulation or redesign, and raw material substitutions. Waste treatment, control, management, and disposal are not considered pollution prevention, per the definitions under Part 143, Waste Minimization, of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended.

Work in Progress means a Deliverable that has been partially prepared, but has not been presented to the State for Approval.

Work Product refers to any data compilations, reports, and other media, materials, or other objects or works of authorship created or produced by the Contractor as a result of an in furtherance of performing the services required by the Contract.



Article 1 – Statement of Work (SOW)

1.010 Project Identification

1.011 Project Request

This is a contract for a Medicaid Hospital Services audit contractor (Contractor) to assist the Michigan Department of Community Health (DCH) Office of Health Services Inspector General (OHSIG) in auditing fee-for-service payments made to hospitals for inpatient services and outpatient service paid under Title XIX of the Social Security Act.

1.012 Background

A. Office of Health Services Inspector General

The OHSIG was established in October of 2011 as an independent, autonomous entity within the Michigan Department of Community Health (DCH) through Executive Order 2010-1. The Executive Order tasked the OHSIG to "...conduct and supervise activities to prevent, detect, and investigate fraud, waste and abuse in Health Services Programs." This includes the power to collect overpayments, restitution amounts and settlement proceeds inappropriately paid through health services programs including Medicaid.

B. Payment to Hospitals for Medicaid Services in Michigan

A majority (about 58.0% in May, 2012) of Medicaid recipients have their care managed through contracted full risk Medicaid Managed Care Organizations (MCO). Those not enrolled in a Medicaid MCO (the medically needy, individuals not yet enrolled in an MCO) have their care paid through direct fee-for-service reimbursement to health providers.

Reimbursement for acute care inpatient services provided to Medicaid fee-for-service enrollees is paid on a weighted Diagnosis Related Group (DRG) basis; adjustments to this payment can be made for outlier inpatient lengths of stay.

Reimbursement for outpatient Medicaid fee-for-service claims is provided through the Medicaid program's Outpatient Prospective Payment System (OPPS). Calculation of the OPPS is based upon current Medicare outpatient hospital rates adjusted to ensure statewide budget neutrality.

Table #1, below, provides relevant summary detail about Medicaid fee-for-service payments to hospitals in the State of Michigan.

Table 1: Summary Detail Michigan Medicaid FFS Hospital Payments

	Inpatient Hospital	Outpatient Hospital
Total Number of Claims	635,205	3,066,918
Total Value of Claims	\$2,199,392,627	\$298,134,723

C. Current Medicaid Hospital Audit Efforts

The State currently contracts for review and audit of fee-for-service Medicaid inpatient and outpatient hospital payments. The current structure of Michigan's audit program for Medicaid hospital payments is as follows:

- **Hospital Services Audit:** The OHSIG provides the current vendor a statistically valid sample of claims for audit, the vendor then reviews the medical records associated with the claim to ensure appropriate billing. The vendor is contractually required to complete 12-15 inpatient hospital audits per contract year and 12-15 outpatient hospital audits per contract year and will typically review 250 patients per audit. Final recovery amounts are generated using extrapolation techniques.
- **Statewide Utilization Review (SWUR):** The State further requires a review of all participating hospitals each year. The vendor is required to review 20 randomly selected inpatient claims and 20 randomly selected outpatient claims for each facility each year.



D. Assumed Medicaid Program Savings

The Fiscal Year (FY) 2012-13 DCH appropriation assumes a reduction in Medicaid expenditure through increased identification of provider overpayments through the OHSIG. Budget documents identify an assumed total Medicaid (State and Federal) savings of \$28.9 million in FY 2012-13 through recovery of overpayments through retrospective review of Medicaid claims. Savings generated through this contract will be a major contributor to these assumed Medicaid savings.

1.020 Scope of Work and Deliverables

1.021 In Scope

The tasks necessary for completing this project include, but are not limited to:

- Identification of appropriate targets, either individual health providers, specific claims, or types of claims, for audit.
- Communication of targeted facilities or claims to the OHSIG for approval and coordination of audit activities with the OHSIG and other contracted staff.
- Communication with audited providers about structure of audit process, provider rights and responsibilities in Michigan's audit program, and transfer of requested medical records.
- Review of medical records for each of the targeted claims to ensure adherence to Michigan Medicaid payment policy and federal and state rules and regulations.
- Identification of any overpayments made to an audited facility for Medicaid services and calculation and communication of recovery amounts to the OHSIG.
- Continued support of OHSIG efforts to access its recovery, up to and including participation in any provider appeal proceeding, as well as continued monitoring to ensure recovery efforts are successful.

A. MDCH Administrative Support

MDCH will provide minimum administrative support which may include standard system changes when appropriate, help communicating with Medicaid contractors, policy interpretations as necessary and other support deemed necessary by MDCH to allow the Contractor to perform their tasks efficiently. MDCH will support changes it determines are necessary, but cannot guarantee timeframes or constraints. In changing systems to support greater efficiencies for MDCH, the end product could result in an administrative task being placed on the Contractor that was not previously. These administrative tasks will not extend from the tasks in the contract and will be applicable to the identification and recovery of the improper payment.

B. Vendor Administrative Tasks

Independently and not as an agent of the State of Michigan, the Contractor will furnish all the necessary services, qualified personnel, material, equipment, and facilities, not otherwise provided by the State, as needed to perform the tasks listed in this RFP. Specifically the vendor must perform the following major tasks:

1. **Project Management:** The Contractor must provide the OHSIG with documents detailing the progress of the Contract effort including monthly progress and financial reports.
2. **Determination of Audit Targets:** The Contractor must use its own information technology tools to review Medicaid fee-for-service claims data to identify appropriate targets (either specific hospital facilities, specific claims, or types of claims) for audit. The Contractor must further be willing and able to perform audits on any provider or claim type identified by the OHSIG. Claims for auditing will not be based on a statistically valid random sample, but rather will be claim specific. Extrapolation would be a rare occurrence and would be done on a case-by-case basis and with the approval of MDCH OHSIG.
3. **Claims Review:** The Contractor will identify Medicaid overpayments through an automated review of claims data and a more comprehensive comparison of Medicaid claims against provider medical records (i.e. Medical Record Review).
4. **Obtaining and Storing Medical Records:** The Contractor must obtain necessary medical records through on-site viewing, copying or scanning or through request and receipt of medical records submitted electronically by CD/DVD, facsimile or paperless facsimile. Copies of reviewed records will be retained in an approved document management system and provide OHSIG access to this system.



5. **Provider Communication:** The Contractor will manage communications with targeted medical facilities. This will include provision of an initial target letter, management of medical record requests, continued update of the audit process and status and communication of final audit results.
6. **Post Claims Review:** The Contractor will document each audit result in an OHSIG-approved document management system and assist in the recovery of any identified Medicaid overpayment as well as continued monitoring to ensure recovery efforts are successful.
7. **Appeals Process:** The Contractor will support the OHSIG in any provider appeal of a recovery. This will include providing supporting documentation of the recovery rationale and participating in any appeal hearing.

1.022 Work and Deliverable

Contractor must provide Deliverables/Services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

A. Communication with State / Project Management

1. Initial Meeting between MDCH Staff and Contractor

The Contractor's key project staff (as identified in section 1.031) will meet in Lansing, Michigan with the relevant OHSIG staff within two weeks of the date of award to discuss the project plan. The specific focus of this meeting will be to discuss the time frames for the tasks outlined below.

Within two weeks of the initial project meeting, the Contractor must submit a formal project plan, outlining the necessary resources and time frame for completing each of the required tasks identified in 1.022. It will be the responsibility of the Contractor to update this project plan when necessary and provide the MDCH project manager with a copy. The project plan will serve as a detailed view of the Contractor's understanding about how it will meet the requirements established in this RFP. As new issues arise the project plan will be updated.

The project plan must include the following:

- a) **Projections:** Detailed quarterly projections of the number and type of audits to be completed.
- b) **Organization Chart:** The organizational chart must identify all key personnel as well as the organizational structure.

2. Conference Calls

The Contractor's key project staff must at a minimum participate in a monthly conference call with the OHSIG to discuss the status of the project including:

- a) **Work Progress:** The progress of the work completed to date. This should include an evaluation of any problems identified by the Contractor and discussion about the Contractor's plans for completion of the immediate next steps required for completion of each action item. The Contractor's project team will conduct root cause analysis (RCA) to clearly identify areas for improvement and to identify successful solutions.
- b) **Necessary or Recommended Changes:** Any recommended changes or process improvements that will assist the MDCH OHSIG in more easily identifying incorrect or fraudulent Medicaid payments to hospitals.

The Contractor is responsible for setting up the conference calls, preparing an agenda, documenting the minutes of the meeting and preparing and distributing any other supporting materials as needed.

3. Monthly Progress Reports

- a) **Monthly Administrative Report:** The Contractor must submit monthly administrative progress reports outlining all work accomplished during the previous month. The Contractor must develop the report format and have it approved by MDCH OHSIG. These reports must include the following:
 - Complications that will impact the completion of any task.
 - Any updates to the Project Plan.
 - A review of all activities completed by the Contractor in the previous month.
 - Recommended changes or improvements that would reduce inappropriate Medicaid payments for hospital services.



- Necessary Contractor and State action items.
 - Appeal statistics.
 - Process improvements to be implemented by the Contractor in the upcoming month(s).
- b) **Monthly Financial Report:** The Contractor must submit monthly financial reports outlining all work accomplished during the previous month. The Contractor must develop the report format and have it approved by MDCH OHSIG. This monthly financial report, at minimum, should detail the following:
- Information about overpayments collected. This figure should only be included if the amount has been collected by MDCH.
 - Information about overpayments adjusted. Amounts will be included on this report if an appeal has been decided in the provider's favor or if the Contractor rescinded the overpayment after adjustment occurred.
 - Overpayments in the queue. This report should detail claims where the Contractor believes an overpayment exists through their audit, but the amount has not been recovered by MDCH.
 - The number of medical records requested from each provider.
 - Number of reviews completed within the previous 60 days.
 - Number of reviews not completed within 60 days.

All reports must be in summary format with all applicable supporting documentation.

Each monthly report must be submitted by the close of business on the fifth business day following the end of the month to the MDCH OHSIG Project Manager and is to include the Contractor's voucher.

B. Coordination with Other State Audit Efforts

1. Coordination System

The Contractor must have a Coordination System, which is a web-based application which houses all Contractor identifications and collections. The Coordination System should include detail about all suppressions and exclusions. Suppressions and exclusions are claims that are not available to the Contractor for review. Contractor must maintain and provide the OHSIG access to their Coordination System; the OHSIG should be able to access this data in a format compatible to the version of Microsoft Excel the MDCH OHSIG is working in, currently 2010. Contractor will receive the extract from CHAMPS and track and maintain the provided exclusions and suppressions, identifications, and collections. Contractor will show the flagged fields in the interface, so OHSIG can view them.

2. Processes to Prevent Overlap

The Contractor must minimize the impact on the provider community by avoiding situations where the Contractor and another entity (e.g. other Medicaid contractors, Medicaid Integrity Contractor, law enforcement) are working on the same claim. Therefore, the Contractor's Coordination System must be used to determine if another entity already has the provider and/or claim under review. The Coordination System must include a master table of excluded providers and claims. This table must be updated on an as needed basis. Before beginning a claim review, the Contractor must utilize the Coordination System and coordinate with the MDCH OHSIG Contract Manager to determine if exclusions exist for that claim. If an exclusion exists for that claim, the Contractor is not permitted to review that claim. If the exclusion is entered after the Contractor begins its review, the Contractor and MDCH OHSIG will be notified so that the Contractor can cease all activity.

An excluded claim is a claim that has been reviewed post-payment by another entity. Exclusions are permanent. This means that an excluded claim will never be available for the Contractor to review.

Please acknowledge your firm's understanding and acceptance of this requirement.

C. Quality Assurance Monitoring

The Contractor must provide a quality assurance mechanism to ensure the accuracy and quality of work performed. Often a quality assurance mechanism includes a secondary review of an appropriate sample of work associated with a specific task. The cost of the required quality assurance mechanism is considered an integral part of any Contract(s) resulting from this RFP and will not be reimbursed separately.



The Contractor's proposal must indicate willingness to and describe how it will comply with this requirement. The proposal must explain how its quality assurance mechanism will assure the required accuracy, timeliness and work quality, how it will function and how MDCH OHSIG will be advised of results. Additionally, the Contractor must be prepared to provide, upon request, a sample of reviewed claims to the Contract Manager to allow the OHSIG to assure the accuracy and quality of the Contractor's work.

D. Medicaid Hospital Audit Process

The Contractor will be required to, with the OHSIG, administer Michigan's Medicaid inpatient and outpatient hospital audit program. This section details the parameters of the audit program required by the OHSIG.

1. Scope of Contractor Audit

The Contractor must pursue the identification of Medicaid claims which contain improper payments for which payment was made or should have been made under Title XIX of the Social Security Act. The OHSIG is requesting that the Contractor identify Medicaid improper/overpayment including:

- a) **Medical Necessity:** The Contractor should identify provider claims for medical services that are not medically necessary.
- b) **Coding Errors:** The Contractor should identify improper Medicaid payments for claims that were incorrectly coded by a provider.
- c) **Duplicate Claims:** The Contractor should identify providers who were reimbursed more than once for a Medicaid provided service.
- d) **Pricing Errors:** The Contractor should identify any errors in pricing for Medicaid services made by the MDCH.
- e) **Other Payment Errors:** The Contractor should identify and review other types of payment errors that may lead to recoveries.

The Contractor will be permitted to review Medicaid claims paid to any in-state or out-of-state provider for any of the following services:

- Inpatient hospital services
- Outpatient hospital services

The Contractor shall apply all applicable Federal and State regulations and Medicaid policy when conducting its audit of providers and/or claims. The Contractor will follow the billing guidelines as outlined in the Michigan Medicaid Provider Manual.

The Contractor will not audit any claims more than three (3) years past the date of service, unless approved by the MDCH OHSIG.

2. Process for Targeting Facilities and Claims for Audit

Claims included in the audit program shall be identified through the following mechanisms:

- a) **Contractor Identification of Likely Overpayment:** The Contractor will be required to review existing MDCH Medicaid claims files to identify likely improper payments. The OHSIG anticipates that a contracted vendor will be able to formulate strategies for targeting claims and/or providers for review that would lead to recoveries. The Contractor will adjust review strategies as necessary over time. Any review strategy identified by the Contractor will need to be reviewed and approved by the MDCH OHSIG prior to implementation.
- b) **MDCH OHSIG Identification of Likely Overpayments:** When necessary, the Contractor will be required to review claims or providers provided by the OHSIG for review.
- c) **General Review of Claims:** The Contractor will be required to complete a general review of inpatient and outpatient Medicaid claims for all new hospital facility that opens during the audit period.

The Contractor will be permitted to request up to ten (10) test claims from an eligible provider(s) to assist its efforts to formulate an audit strategy.

3. Obtaining and Storing Medical Records for Reviews

The Contractor may obtain medical records by going onsite to the provider's location to view/copy the records or by requesting that the provider mail/fax or securely transmit (e.g. encrypted CD/DVD) the



records. Contractor must accept electronic medical records on CD/DVD, via facsimile or paperless facsimile at the provider's request.

If the Contractor attempts an onsite visit and the provider refuses to allow access to their facility, the Contractor may not make an overpayment determination based upon the lack of access. Instead, the Contractor must request the needed records in writing, as well as notify the MDCH OHSIG Contract Manager.

When an onsite review results in an improper payment finding, Contractor must copy the relevant portions of the medical record and retain them for future use. When an onsite review results in no finding of improper payment, the Contractor need not retain a copy of the medical record.

The Contractor must use discretion when requesting medical records to ensure the number of medical records in the request is not negatively impacting the provider's ability to provide care. MDCH OHSIG may institute a medical record request limit and frequency. The Contractor will be required to do the following when managing medical records provided for reviews.

- a) **Updating the Case File:** The Contractor must include all relevant correspondence, staff notes and contacts with other Medicaid contractors or the OHSIG in the case file.
- b) **Collecting an Overpayment for Failure to Provide a Requested Record:** The Contractor may find the claim to be an overpayment if medical records are requested more than once and not received within 45 days.
- c) **Sharing Medical Records:** The Contractor must make available (defined as the transmission of the record on an encrypted CD, FTP, or other means specified by the Contract manager) to MDCH OHSIG any requested medical record, or to any other MDCH OHSIG approved entity on a case-by-case basis. Each non-MDCH OHSIG request must be approved by MDCH OHSIG.
- d) **Storing of Medical Records:** The Contractor must maintain a copy of all medical records associated with a finding of improper payment. The Contractor must, on the effective date of the Contract, be prepared to store imaged medical records. The Contractor shall maintain a MDCH OHSIG approved document management system and will store reviewed medical records for at least seven (7) years and medical records associated with overpayments for the length of the contract. Upon the end of the Contract, the Contractor must send copies of the imaged records to MDCH OHSIG or MDCH OHSIG specified entity.
- e) **Summary Medical Record Information:** The Contractor must make information about the status of a medical record (outstanding, received, review underway, review complete, case closed) available to providers upon request. Contractor must develop a web-based application for this purpose and provide the MDCH OHSIG Contract Manager access to this application.

4. Claims Review Process

- a) The Contractor will review claims and medical records for evidence of overpayment or improper payment. The Contractor must utilize data analysis techniques to identify claims most likely to contain overpayments. The Contractor must demonstrate good cause for reviewing a claim and receive prior approval from the OHSIG prior to auditing a claim. The IG expects that the Contractor will identify overpayments and improper payments through two primary techniques:
 - **Automated Review Processes:** A re-examination of a claim payment at the system level. The focus of this type of review will likely be upon errors in coverage and coding determination, payment of duplicate claims and pricing mistakes.
 - **Medical Record Reviews:** A comparison of submitted claims against the medical records maintained by the audited provider. This review would be undertaken by appropriate professional staff with expertise in the field of medicine being reviewed (such as registered nurses, therapists or other relevant health care professionals). Coding determinations are to be made by certified coders with specialized knowledge of State and Federal Medicaid regulations and policy. The focus of this type of review would likely be focused upon coding errors and provision of services that are not medically necessary or in violation of Medicaid policy.
- b) **Identification of Medicaid Overpayments:** The following types of Medicaid overpayments can be identified and documented by the Contractor.
 - **Full Denials:** A full denial occurs when the Contractor determines that the submitted service was not reasonable and necessary and no other service (for that type of provider) would have



been reasonable and necessary or payable or no service was provided. The overpayment amount is the total paid amount for the service in question.

- **Partial Denials:** A partial denial occurs when the Contractor determines that the submitted service was not reasonable and necessary, but a lower level service would have been reasonable and necessary or the submitted service was up-coded (and a lower level service was actually performed) or an incorrect code (such as a discharge status code) was submitted that caused a higher payment to be made or failure to apply a payment rule causing an improper payment (e.g. failure to reduce payment on multiple surgery cases).
 - **Other:** Situations that are not categorized above are to be brought to the OHSIG Contract Manager's attention before Contractor sends notification to the provider. In these cases, the Contractor must determine the level of service that was reasonable and necessary or represents the correct code for the service described in the medical record. After approval by the OHSIG Contract Manager, the Contractor must proceed with recovery. Only the difference between the paid amount and the amount that should have been paid can be collected.
- c) **Extrapolation:** The Contractor may be allowed to use extrapolation when determining a recovery but only after approval by the MDCH OHSIG Contract Manager. It is the expectation that the types of reviews completed by the Contractor will make use of extrapolation an uncommon occurrence. The Contractor's extrapolation methodology must be approved by the MDCH contracted statistician prior to use.

5. Vendor Interaction with Providers

- a) It is the OHSIG's expectation that its audit services contractor structure its audit program to be respectful and transparent to targeted providers. The Contractor shall ensure the following in managing audit services on behalf of the State of Michigan:
- **Confidentiality:** The Contractor must maintain absolute confidentiality of providers and beneficiaries assuring that no disclosure of information that may identify provider(s) or beneficiaries is shared inappropriately. The Contractor must be in compliance with HIPAA per the Attachment B Business Associate Addendum. All documents and/or information obtained by the Contractor from MDCH or health providers in connection with this Contract shall be kept confidential and shall not be provided to any third party unless disclosure is approved in writing by the MDCH OHSIG.
 - **Administrative Burden to Providers:** The Contractor must ensure that processes are developed to minimize provider burden to the greatest extent possible when identifying Medicaid improper payments.

Additionally, the Contractor must adhere to the following requirements when communicating with providers targeted for audit.

- b) **Communication with Providers about Improper Payment Cases:** The Contractor may send the provider only one review result per claim. If the Contractor is reviewing a claim using both an automated review process and medical records review, a single letter clearly detailing the results of both reviews will be sent to the provider.
- c) **Communicating Automated Review Results:** The Contractor must communicate to the provider the results of each automated review that results in an overpayment determination. The Contractor must inform the provider of which coverage/coding/payment policy or article was violated. The Contractor need not communicate to providers the results of automated reviews that do not result in an overpayment determination. The Contractor must record the date and format of this communication in the Contractor Coordination System.
- d) **Communicating Medical Records Review Results:** The Contractor must communicate to the provider the results of every medical records review (i.e., every review where a medical record was obtained), including cases where no improper payment was identified. In cases where an improper payment was identified, the Contractor must inform the provider of which coverage/coding/payment policy or article was violated. The Contractor must record the date and format of this communication in the Contractor Coordination System.
- e) **Provider Notification Letter Structure:** The Contractor must send a letter to the provider indicating the results of the review within 60 days of the exit conference (for provider site reviews) or receipt of medical records (for Contractor site reviews). If the Contractor needs more than 60



days, they are to contact the OHSIG Contract Manager for an extension. Each letter must include:

- Identification of the provider(s) --name, address, and provider number.
- The reason for conducting the review.
- A narrative description of the overpayment situation: state the specific issues involved which created the improper payment and any pertinent issues as well as any recommended corrective actions the provider should consider taking.
- The findings for each claim in the sample, including a specific explanation of why services were determined to be non-covered, or incorrectly coded.
- A list of all individual claims including the actual amounts determined to be non-covered, the specific reason for non-coverage and the amounts denied
- An explanation of Medicaid's right to recover overpayments as well as the procedures for recovery of overpayments and the provider's right to request an extended repayment schedule.
- The provider appeal rights information.

6. Vendor Communication with MDCH OHSIG

- a) The Contractor is required to provide the MDCH OHSIG detailed information about identified fraud or quality of care concerns to the MDCH as they are identified. If the Contractor, during the course of a provider review, identifies evidence of provider fraud or other provider practices that would significantly impact the quality of care provided or safety of patients, the Contractor is required to notify the MDCH OHSIG. This notification shall be provided through an email contact to the MDCH OHSIG contract manager within one (1) business day of the identified concern. Within five (5) days of the identification of the provider practice the Contractor shall provide the MDCH OHSIG with a written report detailing the following:
 - The provider name.
 - The location of the provider / facility.
 - The provider's National Provider Identifier (NPI) number.
 - The date of the identified fraudulent or concerning provider behavior.
 - Summary detail describing the nature of the provider behavior.
- b) If the Contractor, during the course of a claims review, identifies Medicaid reimbursement made for health services eligible for payment through another private or public health coverage program, the Contractor shall notify the MDCH OHSIG via email within five (5) business days. The email notification shall identify the following:
 - The name of the individual who received Medicaid reimbursed health services.
 - The name of the provider who provided the health services.
 - The date and location of services provided.
 - Summary detail describing the services provided and the public or private entity liable for payment.

7. Post Claims Review Process

Following completion of any audit activity, the Contractor must complete the following.

- a) **Audit Determination Rationale:** The Contractor must document the rationale for each determination resulting from the audit. This rationale must list the review findings including a detailed description of the Medicaid policy or regulation that was violated and a statement as to whether the violation resulted in an improper payment. Contractor must make available upon request by MDCH OHSIG any requested rationale.
- b) **Storing and Making Available Rationale Documents:** The Contractor must, on the effective date of the Contract, be prepared to store and share imaged medical records through its document management system. The Contractor will store all rationale documents for at least seven (7) years and store rationale documents associated with overpayments for the duration of the Contract.
- c) **Updating the Contractor Coordination System:** The Contractor must update its Coordination System with the following:
 - Line level claim detail.
 - The improper payment amount for each claim in question.
 - The date of the original demand/notification letter.



- Appeal status.
 - Collection detail and/or adjustments due to errors/appeals.
- d) **Recovery of Overpayments:** Contractor must assist MDCH OHSIG in the recoupment of post-appeal Medicaid overpayments that are identified through the Claims Review Process as described in Section D.4. The recovery techniques utilized by Contractor must be legally supportable. The recovery techniques will follow the guidelines of all applicable Medicaid regulations and manuals as well as all federal debt collection standards.

8. Supporting the Provider Appeals Process

Providers are given appeal rights for Medicaid overpayments identified through this audit process. If a provider chooses to appeal an overpayment determined by the Contractor, the Contractor, at no additional charge, must assist MDCH OHSIG with support of the overpayment determination throughout all levels of the appeal. This includes providing supporting documentation (including the medical record) and appropriate reference to Medicaid policy, federal and State regulations as well as providing assistance by representing the OHSIG at any hearings associated with the overpayment.

Representation Related to Provider Appeals

Requirement(s):

The Contractor must comply with State and federal rules, regulations, policies and procedures and Contract requirements for provider appeals including, but not limited to, the following:

- 1) Provide at no extra cost to the Department, sufficient staff to respond to provider appeals and perform the activities listed in this section;
- 2) Coordinate, where appropriate, with the Department's and other State departments' personnel who are involved in the appeals process;
- 3) Prepare the appropriate reports and documents to support the Contractor's actions resulting in the request for an appeal from a provider, including, but not limited to detailed audit findings, including overpayment amounts, rationale for the findings, including the policy violated, information omitted, or other reasons for a denied claim or audit finding; and citations to specific section(s) of the Medicaid Provider Manual, Bulletins, administrative code, or other documentation stating the policies, regulations, or rules that the pharmacy violated, leading to the adverse determination.
- 4) Work with the Department to resolve all provider questions through an informal resolution process to reduce the number of formal appeals;
- 5) Support the Department in settlement discussions, in coordination with and at the direction of the Department;
- 6) Support the Department in the administrative hearing process for those appeals that cannot be resolved by informal processes;
- 7) Provide appropriate, knowledgeable staff to attend and participate in scheduled meetings and hearings;
- 8) Provide appropriate witness(es) and necessary documentation to reasonably support audit findings at appeals hearings;
- 9) Track each appeal and its status in the hearing process;
- 10) Comply with all mandates and timelines stipulated by the Administrative Law Judge (ALJ); and
- 11) Develop policies and procedures for the appeals process as directed by the Department.

Failure to submit appeal rationale and other necessary information within the required timeframe shall result in the Contractor being liable for any costs that the Department incurs as a result of the Contractor's noncompliance. Acceptance of this deliverable assumes that Contractor will be given reasonable and adequate advance notice of the hearings and the opportunity for mutually agreeable scheduling input. Contractor will not be liable for adverse decisions resulting from appeals unless it has failed to reasonably provide information and assistance as required by the scope of work.

The Contractor must attend and defend the Contractor's decisions at all appeals, hearings, or teleconferences, whether informal or formal, or whether in person or by telephone, or as deemed necessary by the Department.



Failure to attend or defend the Contractor's decisions at all appeal hearings or conferences shall result in the Contractor being liable for any costs that the Department incurs as a result of the Contractor's noncompliance. Acceptance of this deliverable assumes that Contractor will be given reasonable and adequate advance notice of the hearings and the opportunity for mutually agreeable scheduling input. Contractor will not be liable for adverse decisions resulting from appeals unless it has failed to reasonably provide information and assistance as required by the scope of work.

The Contractor must assist the Department with the rationale and supporting documentation for any and all outstanding or backlogged appeals based on information provided by the Department.

The Contractor must meet with Department staff every two weeks, or more frequently if reasonably necessary, to discuss outstanding and backlogged appeals and work toward their resolution. Meetings will take place via teleconference and on-site as reasonably requested.

The Contractor, upon termination of this Contract, remains obligated, at no additional cost, to comply with all legal and continuing contractual obligations arising in relation to its duties and responsibilities under the Contract including, but not limited to, record retention, audit findings, and provider appeals. The Contractor shall have an ongoing duty to represent the Contractor's audit findings in the appeals process until all provider (1) overpayments are collected, (2) audits are closed, (3) appeals are resolved, and (4) appeal time periods have passed. This section shall survive termination of this Contract.

Providers will request an appeal through the MDCH appeals process. If Contractor receives a written appeal request it must forward it to MDCH OHSIG and the MDCH Appeals Section within one business day of receipt. If Contractor receives a verbal request for appeal from a provider, Contractor must give the contact information for the MDCH Appeals area to the provider.

1.030 Roles and Responsibilities

1.031 Contractor Staff, Roles, and Responsibilities

A. General Contractor Requirements

The scope of work outlined in Section 1.022 of this RFP requires a Contractor with several very specific capabilities. The OHSIG requires any RFP respondent to demonstrate the following to be eligible for consideration of contract award.

1. **Michigan-Based Office:** The Contractor must currently have a physical office within the State of Michigan or describe how, upon contract award, they will open an office in Michigan by the contract start date.
2. **Quality Improvement Organization:** The Contractor must be a Quality Improvement Organization (QIO) or QIO-like entity to be qualified for this Contract. (See Attachment B)
3. **Clinical Expertise:** The Contractor must use clinically-trained claims reviewers who have knowledge of inpatient hospital, outpatient hospital, emergency room services utilization review. These clinical reviewers must have specialized knowledge about the policies and procedures that govern the provision of services through Michigan's Medicaid program. Contractor must ensure that coverage/medical necessity reviews are made by an appropriate professional staff person, such as RNs, therapists or healthcare professional whose expertise is in the field of medicine being reviewed, and that coding determinations are made by certified coders. Contractor must ensure that no nurse, therapist or coder reviews claims from a provider who is or was their past employer. Contractor must maintain and provide documentation upon the provider's request for the credentials of the individuals making the medical review determinations.
4. **Information Technology (IT):** The Contractor must demonstrate access to software and hardware tools to meet the technical requirements of this contract. The Contractor must specifically demonstrate how their IT tools can be used to review Michigan Medicaid claim files for likely audit targets.

B. Contractor Staff Requirements

The Contractor must maintain Key Personnel and upon award provide names and describe the responsibilities of all Key Personnel, whether employed by the Contractor or any Subcontractor of the Contractor. The description of each staff person should include the following:



- An explanation of each individual's functional roles and responsibilities (not just titles).
- A summary of each individual's experience on contracts similar in scope and size to this Contract.
- An estimate of the proportion of each staff person's time per month the individuals will be dedicated to the Contract.
- An estimate of the proportion of each staff person's time per month the individual will be working on this Contract in the State of Michigan.

The Key Personnel must include:

- Medical Director – minimum .2 FTE
- Director of Medical Review Services – minimum .4 FTE
- Project Manager – Minimum 1 FTE
- IT Director – Minimum .05 FTE
- Director of Applied Epidemiology and Evaluation – Minimum .4 FTE (Development, Design & Implementation phase) then .25 FTE (Operations phase)
- Registered Health Information Technician (RHIT) – Minimum .25 FTE

The contractor must maintain other staff that is clinically trained claims reviewers with a minimum of 10 years of experience in reviewing Medicare and Medicaid claims.

- Coders
- Registered Nurses
- Properly credentialed Physician Reviewers
- Therapists

1.040 Project Plan

1.041 Project Plan Management

The Contractor will be required to carry out each of the tasks outlined in Section 1.022 of this RFP under the direction and control of the MDCH OHSIG. There will be a continuous liaison between the Contract team and the MDCH OHSIG contract manager over the life of the proposed contract. Interactions between the MDCH OHSIG and the Contractor will include the following required activities:

1. **Initial Meeting:** Within two weeks of contract award the Contractor will meet with the MDCH OHSIG in Lansing, Michigan to discuss the project plan for this Contract.
2. **Project Plan:** Within two weeks of the initial meeting between the Contractor and the MDCH OHSIG, the Contractor will submit an updated Project Plan. The Project Plan will include projections about the number and type of audits that will be conducted over the life of the contract and an organization chart detailing all Key Personnel allocated to the contract.
3. **Monthly Conference Calls:** Key project staff or a designated point person will engage in monthly conference calls with the MDCH OHSIG to discuss progress of the Contractor in completing contract tasks and needed changes in approach to increase collection of inappropriate Medicaid payments.
4. **Monthly Administrative Report:** The Contractor must submit to the OHSIG a monthly administrative report outlining all completed work from the previous month. The report will include summary information about work completed to date and discussion about needed updates to the Project Plan. It will also include information related to any issues found related to potential fraud, quality of care, and Third Party Liability (TPL).
5. **Monthly Financial Report:** The Contractor must submit to the OHSIG a monthly financial report outlining overpayments collected to date; estimates of likely overpayments to be collected in the near future and summary data about reviews, appeals and medical records completed over the previous month.

1.042 Reports

The following reports and electronic files will be required from the Contractor.

Activity in Sec. 1.022	Report or File	Frequency
1B	Initial project plan.	Due within two



		weeks of contract award. Updated as needed
1D	Monthly administrative report	Monthly
1D	Monthly financial report	Monthly
2A	Coordination system data. Information about all suppressions and exclusions identified by the Contractor to date.	Continuous
3	Quality assurance claims for review. The MDCH OHSIG may request a sample of reviewed claims to test the accuracy of the Contractor's work.	As requested
4C	Summary medical claim detail. Summary information describing status of Contractor review of a specific claim. This will be available to relevant providers as well.	Continuous

The Contractor must describe how they plan to meet the requirements of 1.042, including identifying and explaining and deviations from the required reporting. Additionally, the Contractor will identify any standard reports that are available to meet these requirements and how these reports may be customized to meet the requirements of the RFP.

1.050 Acceptance

1.051 Criteria

The following criteria will be used by the State to determine Acceptance of the Services or Deliverables provided under this SOW:

The following criteria will be used by the MDCH OHSIG to determine Acceptance of Services or Deliverables provided under the Statement of Work detailed in Section 1.022 of this RFP.

Deliverable	Due Date	Acceptance Process and Criteria	Designated State Staff to Sign Off
Initial Project Meeting	Two weeks after contract award.	Contractor to determinate appropriate time with MDCH OHSIG.	MDCH OHSIG Contract Manager.
Project Plan	Two weeks after initial project meeting.	Contractor to develop proposed project plan for review and approval by MDCH OHSIG.	MDCH OHSIG Contract Manager
Monthly Conference Calls	Monthly	Contractor and MDCH OHSIG Contract Manager to identify appropriate time for monthly conference calls.	MDCH OHSIG Contract Manager
Monthly Progress Reports	Monthly	The Contractor will develop and propose a template for the Monthly Progress Report to be reviewed and approved by the MDCH OHSIG.	MDCH OHSIG Contract Manager
Monthly Financial Reports	Monthly	The Contractor will develop and propose a template for the Monthly Financial Report to be reviewed and approved by the MDCH OHSIG.	MDCH OHSIG Contract Manager
Web-Based Coordination System	Prior to identifying overpayments	The Contractor will develop and establish a web-based application to house all identifications, collections, suppression and exclusions.	MDCH OHSIG Contract Manager
Provider Web-Based Application	Prior to beginning claims review process	The Contractor will develop and establish a web-based application to make available information about the status of a medical record to providers upon request.	MDCH OHSIG Contract Manager
Case File Transfers	Within 15 days of contract end.	The Contractor will establish a process for transfer of case files to be reviewed and approved by the MDCH OHSIG.	MDCH OHSIG Contract Manager



Final Report-Draft	Within four weeks of contract end date.	Contractor to develop a format for its final report to be reviewed and approved by the OHSIG. The OHSIG will approve the content and format of the draft final report prior to completion of the final report.	MDCH OHSIG Contract Manager
Final Report	Within eight weeks of contract end date	Contractor to address concerns or format changes identified through the OHSIG's review of the draft final report.	MDCH OHSIG Contract Manager

1.052 Final Acceptance

The Contractor must be able to perform/provide all services, deliverables and requirements and continue to do so throughout the entirety of the contract.

1.060 Proposal Pricing

1.061 Proposal Pricing

The Contractor is required to submit a contingency percentage to be applied to inappropriate Medicaid payments recovered through the scope of work outlined in this RFP.

For authorized Services and Price List, see Attachment A.

Contractors are encouraged to offer quick payment terms (i.e. _____% discount off invoice if paid within _____ days). This information can be noted on the Contractors price proposal (see Attachment A). This may be a factor considered in our award decision.

Contractor's out-of-pocket expenses are not separately reimbursable by the State unless, on a case-by-case basis for unusual expenses, the State has agreed in advance and in writing to reimburse Contractor for the expense at the State's current travel reimbursement rates. See www.michigan.gov/dtmb for current rates.

1.062 Price Term

Prices quoted are firm for the entire length of the Contract.

1.063 Tax Excluded from Price

(a) Sales Tax: For purchases made directly by the State, the State is exempt from State and Local Sales Tax. Prices must not include the taxes. Exemption Certificates for State Sales Tax will be furnished upon request.

(b) Federal Excise Tax: The State may be exempt from Federal Excise Tax, or the taxes may be reimbursable, if articles purchased under any resulting Contract are used for the State's exclusive use. Certificates showing exclusive use for the purposes of substantiating a tax-free or tax-reimbursable sale will be sent upon request. If a sale is tax exempt or tax reimbursable under the Internal Revenue Code, prices must not include the Federal Excise Tax.

1.064 Holdback—Deleted/Not Applicable

1.070 Additional Requirements

1.071 Additional Terms and Conditions specific to this RFP

Transition Plan

From time to time the transition from one Contractor to another Contractor will need to occur (e.g., when the outgoing Contractor cease work and the new incoming permanent Contractor begin work). It is in the best interest of all parties that these transitions occur smoothly. In the event, a transition is necessary; a transition plan will be required. The transition plan must include specific dates with regard to requests for medical records, written notification of an overpayment, any written correspondence with providers and phone communication with providers. The transition plan will be communicated to all affected parties (including providers) by MDCH OHSIG within 60 days of its enactment. These requirements are in addition to those listed in Section 2.170.

Protected Health Information



Contractor must have written policies and procedures addressing the use of any protected health data (PHI) and information that falls under the Health Insurance Portability and Accountability Act (HIPAA) requirements. The policies and procedures must meet all applicable federal and State requirements including HIPAA requirements. These policies and procedures must include restricted access to the protected health data and information by the Contractor's employees. The Contractor will be required to sign the HIPAA Business Associate Agreement (Attachment B) as a part of the Contract.



Article 2. Terms and Conditions

2.000 Contract Structure and Term

2.001 Contract Term

The Contract is for a period of 3 years beginning July 1, 2013 through June 30, 2016. All outstanding Purchase Orders must also expire upon the termination (cancellation for any of the reasons listed in **Section 2.150**) of the Contract, unless otherwise extended under the Contract. Absent an early termination for any reason, Purchase Orders issued but not expired, by the end of the Contract's stated term, will remain in effect for the balance of the fiscal year for which they were issued.

2.002 Options to Renew

The Contract may be renewed in writing by mutual agreement of the parties not less than 30 days before its expiration. The Contract may be renewed for up to 2 additional 1 year periods.

2.003 Legal Effect

Contractor must show acceptance of the Contract by signing two (2) copies of the Contract and returning them to the Contract Administrator. The Contractor must not proceed with the performance of the work to be done under the Contract, including the purchase of necessary materials, until both parties have signed the Contract to show acceptance of its terms, and the Contractor receives a Contract release/purchase order that authorizes and defines specific performance requirements.

Except as otherwise agreed in writing by the parties, the State assumes no liability for costs incurred by Contractor or payment under the Contract, until Contractor is notified in writing that the Contract (or Change Order) has been approved by the State Administrative Board (if required), approved and signed by all the parties, and a Purchase Order against the Contract has been issued.

2.004 Attachments & Exhibits

All Attachments and Exhibits affixed to any and all Statement(s) of Work, or appended to or referencing the Contract, are incorporated in their entirety and form part of the Contract.

2.005 Ordering

The State will issue a written Purchase Order, Blanket Purchase Order, Direct Voucher or Procurement Card Order, which must be approved by the Contract Administrator or the Contract Administrator's designee, to order any Services/Deliverables under the Contract. All orders are subject to the terms and conditions of the Contract. No additional terms and conditions contained on either a Purchase Order or Blanket Purchase Order apply unless they are also specifically contained in that Purchase Order's or Blanket Purchase Order's accompanying Statement of Work. Exact quantities to be purchased are unknown; however, the Contractor must furnish all such materials and services as may be ordered during the CONTRACT period. Quantities specified, if any, are estimates based on prior purchases, and the State is not obligated to purchase in these or any other quantities.

2.006 Order of Precedence

(a) The Contract, including any Statements of Work and Exhibits, to the extent not contrary to the Contract, each of which is incorporated for all purposes, constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior agreements, whether written or oral, with respect to the subject matter and as additional terms and conditions on the purchase order must apply as limited by **Section 2.005**.

(b) In the event of any inconsistency between the terms of the Contract and a Statement of Work, the terms of the Statement of Work will take precedence (as to that Statement of Work only); provided, however, that a Statement of Work may not modify or amend the terms of the Contract, which may be modified or amended only by a formal Contract amendment.

2.007 Headings

Captions and headings used in the Contract are for information and organization purposes. Captions and headings, including inaccurate references, do not, in any way, define or limit the requirements or terms and conditions of the Contract.



2.008 Form, Function & Utility

If the Contract is for use of more than one (1) State agency and if the Deliverable/Service does not meet the form, function, and utility required by that State agency, that agency may, subject to State purchasing policies, procure the Deliverable/Service from another source.

2.009 Reformation and Severability

Each provision of the Contract is severable from all other provisions of the Contract and, if one (1) or more of the provisions of the Contract is declared invalid, the remaining provisions of the Contract remain in full force and effect.

2.010 Consents and Approvals

Except as expressly provided otherwise in the Contract, if either party requires the consent or approval of the other party for the taking of any action under the Contract, the consent or approval must be in writing and must not be unreasonably withheld or delayed.

2.011 No Waiver of Default

If a party fails to insist upon strict adherence to any term of the Contract then the party has not waived the right to later insist upon strict adherence to that term, or any other term, of the Contract.

2.012 Survival

Any provisions of the Contract that impose continuing obligations on the parties, including without limitation the parties' respective warranty, indemnity and confidentiality obligations, survive the expiration or termination of the Contract for any reason. Specific references to survival in the Contract are solely for identification purposes and not meant to limit or prevent the survival of any other section.

2.020 Contract Administration

2.021 Issuing Office

The Contract is issued by the Michigan Department of Community Health (MDCH) Office of Health Service Inspector General (OHSIG) (collectively, including all other relevant State of Michigan departments and agencies, the "State"). MDCH Grants & Purchasing Division is the sole point of contact in the State with regard to all procurement and contractual matters relating to the Contract. MDCH Grants & Purchasing Division **is the only State office authorized to change, modify, amend, alter or clarify the prices, specifications, terms and conditions of the Contract.** The Contractor Administrator within MDCH Grants & Purchasing Division for the Contract is:

Greg Rivet
MDCH Grants and Purchasing Division
320 South Walnut
Lansing, MI 49913
RivetG@michigan.gov
Phone: 517-335-5096
Fax: 517-241-4845

2.022 Contract Compliance Inspector

After MDCH Grants & Purchasing Division receives the properly executed Contract, it is anticipated that the Director of MDCH Grants & Purchasing Division, in consultation with MSA, will direct the person named below, or any other person so designated, to monitor and coordinate the activities for the Contract. However, monitoring of the Contract implies **no authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions and specifications of the Contract as that authority is retained by MDCH GRANTS & PURCHASING DIVISION.** The CCI for the Contract is:

Greg Rivet
MDCH Grants and Purchasing Division
320 South Walnut
Lansing, MI 49913
RivetG@michigan.gov
Phone: 517-335-5096



Fax: 517-241-4845

2.023 Project Manager

The following individual will oversee the project:

Pamela Callum-Bragg, Contract Manager
Department of Community Health, Office of Inspector General
PO Box 30479
Lansing, MI 48909
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Phone: 517-241-0274
Fax: 517-241-9087

2.024 Change Requests

The State reserves the right to request, from time to time, any changes to the requirements and specifications of the Contract and the work to be performed by the Contractor under the Contract. During the course of ordinary business, it may become necessary for the State to discontinue certain business practices or create Additional Services/Deliverables. At a minimum, to the extent applicable, the State would like the Contractor to provide a detailed outline of all work to be done, including tasks necessary to accomplish the services/deliverables, timeframes, listing of key personnel assigned, estimated hours for each individual per task, and a complete and detailed cost justification.

If the Contractor does not so notify the State, the Contractor has no right to claim thereafter that it is entitled to additional compensation for performing that service or providing that deliverable.

Change Requests:

- (a) By giving Contractor written notice within a reasonable time, the State must be entitled to accept a Contractor proposal for Change, to reject it, or to reach another agreement with Contractor. Should the parties agree on carrying out a Change, a written Contract Change Notice must be prepared and issued under the Contract, describing the Change and its effects on the Services and any affected components of the Contract (a "Contract Change Notice").
- (b) No proposed Change may be performed until the proposed Change has been specified in a duly executed Contract Change Notice issued by the MDCH Grants and Purchasing Division.
- (c) If the State requests or directs the Contractor to perform any activities that Contractor believes constitute a Change, the Contractor must notify the State that it believes the requested activities are a Change before beginning to work on the requested activities. If the Contractor fails to notify the State before beginning to work on the requested activities, then the Contractor waives any right to assert any claim for additional compensation or time for performing the requested activities. If the Contractor commences performing work outside the scope of the Contract and then ceases performing that work, the Contractor must, at the request of the State, retract any out-of-scope work that would adversely affect the Contract.

2.025 Notices

Any notice given to a party under the Contract must be deemed effective, if addressed to the State contact as noted in Section 2.021 and the Contractor's contact as noted on the cover page of the contract, upon: (i) delivery, if hand delivered; (ii) receipt of a confirmed transmission by facsimile if a copy of the notice is sent by another means specified in this Section; (iii) the third Business Day after being sent by U.S. mail, postage pre-paid, return receipt requested; or (iv) the next Business Day after being sent by a nationally recognized overnight express courier with a reliable tracking system.

Either party may change its address where notices are to be sent by giving notice according to this Section.

2.026 Binding Commitments

Representatives of Contractor must have the authority to make binding commitments on Contractor's behalf within the bounds set forth in the Contract. Contractor may change the representatives from time to time upon written notice.

2.027 Relationship of the Parties



The relationship between the State and Contractor is that of client and independent contractor. No agent, employee, or servant of Contractor or any of its Subcontractors must be deemed to be an employee, agent or servant of the State for any reason. Contractor is solely and entirely responsible for its acts and the acts of its agents, employees, servants and Subcontractors during the performance of the Contract.

2.028 Covenant of Good Faith

Each party must act reasonably and in good faith. Unless stated otherwise in the Contract, the parties must not unreasonably delay, condition, or withhold the giving of any consent, decision, or approval that is either requested or reasonably required of them in order for the other party to perform its responsibilities under the Contract.

2.029 Assignments

(a) Neither party may assign the Contract, or assign or delegate any of its duties or obligations under the Contract, to any other party (whether by operation of law or otherwise), without the prior written consent of the other party; provided, however, that the State may assign the Contract to any other State agency, department, division or department without the prior consent of Contractor and Contractor may assign the Contract to an affiliate so long as the affiliate is adequately capitalized and can provide adequate assurances that the affiliate can perform the requirements of the Contract. The State may withhold consent from proposed assignments, subcontracts, or novations when the transfer of responsibility would operate to decrease the State's likelihood of receiving performance on the Contract or the State's ability to recover damages.

(b) Contractor may not, without the prior written approval of the State, assign its right to receive payments due under the Contract. If the State permits an assignment, the Contractor is not relieved of its responsibility to perform any of its contractual duties, and the requirement under the Contract that all payments must be made to one (1) entity continues.

(c) If the Contractor intends to assign the Contract or any of the Contractor's rights or duties under the Contract, the Contractor must notify the State in writing at least 90 days before the assignment. The Contractor also must provide the State with adequate information about the assignee within a reasonable amount of time before the assignment for the State to determine whether to approve the assignment.

2.030 General Provisions

2.031 Media Releases

News releases (including promotional literature and commercial advertisements) pertaining to the RFP and Contract or project to which it relates must not be made without prior written State approval, and then only in accordance with the explicit written instructions from the State. No results of the activities associated with the RFP and Contract are to be released without prior written approval of the State and then only to persons designated.

2.032 Contract Distribution

MDCH Grants and Purchasing Division retains the sole right of Contract distribution to all State agencies and local units of government unless other arrangements are authorized by MDCH Grants and Purchasing Division.

2.033 Permits

Contractor must obtain and pay any associated costs for all required governmental permits, licenses and approvals for the delivery, installation and performance of the Services. The State must pay for all costs and expenses incurred in obtaining and maintaining any necessary easements or right of way.

2.034 Website Incorporation

The State is not bound by any content on the Contractor's website, even if the Contractor's documentation specifically referenced that content and attempts to incorporate it into any other communication, unless the State has actual knowledge of the content and has expressly agreed to be bound by it in a writing that has been manually signed by an authorized representative of the State.

2.035 Future Bidding Preclusion



Contractor acknowledges that, to the extent the Contract involves the creation, research, investigation or generation of a future RFP, it may be precluded from bidding on the subsequent RFP. The State reserves the right to disqualify any Contractor if the State determines that the Contractor has used its position (whether as an incumbent Contractor, or as a Contractor hired to assist with the RFP development, or as a Vendor offering free assistance) to gain a competitive advantage on the RFP

2.036 Freedom of Information

All information in any proposal submitted to the State by Contractor and the Contract is subject to the provisions of the Michigan Freedom of Information Act, 1976 PA 442, MCL 15.231, et seq (the "FOIA").

2.037 Disaster Recovery

Contractor and the State recognize that the State provides essential services in times of natural or man-made disasters. Therefore, except as so mandated by Federal disaster response requirements, Contractor personnel dedicated to providing Services/Deliverables under the Contract must provide the State with priority service for repair and work around in the event of a natural or man-made disaster.

2.040 Financial Provisions

2.041 Fixed Prices for Services/Deliverables

Each Statement of Work or Purchase Order issued under the Contract must specify (or indicate by reference to the appropriate Contract Exhibit) the firm, fixed prices for all Services/Deliverables, and the associated payment milestones and payment amounts. The State may make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts approved by the Contract Administrator, after negotiation. Contractor must show verification of measurable progress at the time of requesting progress payments.

2.042 Adjustments for Reductions in Scope of Services/Deliverables

If the scope of the Services/Deliverables under any Statement of Work issued under the Contract is subsequently reduced by the State, the parties must negotiate an equitable reduction in Contractor's charges under such Statement of Work commensurate with the reduction in scope.

2.043 Services/Deliverables Covered

For all Services/Deliverables to be provided by Contractor (and its Subcontractors, if any) under the Contract, the State must not be obligated to pay any amounts in addition to the charges specified in the Contract.

2.044 Invoicing and Payment – In General

- (a) Each Statement of Work issued under the Contract must list (or indicate by reference to the appropriate Contract Exhibit) the prices for all Services/Deliverables, equipment and commodities to be provided, and the associated payment milestones and payment amounts.
- (b) Each Contractor invoice must show details as to charges by Service/Deliverable component and location at a level of detail reasonably necessary to satisfy the State's accounting and charge-back requirements. Invoices for Services performed on a time and materials basis must show, for each individual, the number of hours of Services performed during the billing period, the billable skill/labor category for such person and the applicable hourly billing rate. Prompt payment by the State is contingent on the Contractor's invoices showing the amount owed by the State minus any holdback amount to be retained by the State in accordance with **Section 1.064**.
- (c) Correct invoices will be due and payable by the State, in accordance with the State's standard payment procedure as specified in 1984 PA 279, MCL 17.51 et seq., within 45 days after receipt, provided the State determines that the invoice was properly rendered.
- (d) Contract Payment Schedule
 - 1. Contractor request for performance-based payment.

The Contractor may submit requests for payment of performance-based payments not more frequently than monthly, in a form and manner acceptable to the CCI. Unless otherwise authorized by the CCI, all performance-based payments in any period for



which payment is being requested must be included in a single request, appropriately itemized and totaled.

2. Approval and payment of requests.

a) The Contractor is not entitled to payment of a request for performance-based payment prior to successful accomplishment of the event or performance criterion for which payment is requested. The CCI must determine whether the event or performance criterion for which payment is requested has been successfully accomplished in accordance with the terms of the Contract. The CCI may, at any time, require the Contractor to substantiate the successful performance of any event or performance criterion, which has been or is represented as being payable.

b) A payment under this performance-based payment clause is a contract financing payment under the Quick Payment Terms in **Section 1.061** of the Contract.

c) The approval by the CCI of a request for performance-based payment does not constitute an acceptance by the State and does not excuse the Contractor from performance of obligations under the Contract.

2.045 Pro-ration

To the extent there are any Services that are to be paid for on a monthly basis, the cost of such Services must be pro-rated for any partial month.

2.046 Antitrust Assignment

The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of the Contract.

2.047 Final Payment

The making of final payment by the State to Contractor does not constitute a waiver by either party of any rights or other claims as to the other party's continuing obligations under the Contract, nor will it constitute a waiver of any claims by one (1) party against the other arising from unsettled claims or failure by a party to comply with the Contract, including claims for Services and Deliverables not reasonably known until after acceptance to be defective or substandard. Contractor's acceptance of final payment by the State under the Contract must constitute a waiver of all claims by Contractor against the State for payment under the Contract, other than those claims previously filed in writing on a timely basis and still unsettled.

2.048 Electronic Payment Requirement

Electronic transfer of funds is required for payments on State contracts. The Contractor must register with the State electronically at <http://www.cpexpress.state.mi.us>. As stated in 1984 PA 431, all contracts that the State enters into for the purchase of goods and services must provide that payment will be made by Electronic Fund Transfer (EFT).

2.050 Taxes

2.051 Employment Taxes

Contractors are expected to collect and pay all applicable federal, state, and local employment taxes.

2.052 Sales and Use Taxes

Contractors are required to be registered and to remit sales and use taxes on taxable sales of tangible personal property or services delivered into the State. Contractors that lack sufficient presence in Michigan to be required to register and pay tax must do so as a volunteer. This requirement extends to: (1) all members of any controlled group as defined in § 1563(a) of the Internal Revenue Code and applicable regulations of which the company is a member, and (2) all organizations under common control as defined in § 414(c) of the Internal Revenue Code and applicable regulations of which the company is a member that make sales at retail for delivery into the State are registered with the State for the collection and remittance of sales and use taxes. In applying treasury regulations defining "two (2) or more trades or businesses under common control" the term "organization" means sole proprietorship, a partnership (as defined in § 701(a)(2) of the Internal Revenue Code), a trust, an estate, a corporation, or a limited liability company.



2.060 Contract Management

2.061 Contractor Personnel Qualifications

All persons assigned by Contractor to the performance of Services under the Contract must be employees of Contractor or its majority-owned (directly or indirectly, at any tier) subsidiaries (or a State-approved Subcontractor) and must be fully qualified to perform the work assigned to them. Contractor must include a similar provision in any subcontract entered into with a Subcontractor. For the purposes of the Contract, independent contractors engaged by Contractor solely in a staff augmentation role must be treated by the State as if they were employees of Contractor for the Contract only; however, the State understands that the relationship between Contractor and Subcontractor is an independent contractor relationship.

2.062 Contractor Key Personnel

- (a) The Contractor must provide the CCI with the names of the Key Personnel.
- (b) Key Personnel must be dedicated as defined in the Statement of Work to the Project for its duration in the applicable Statement of Work with respect to other individuals designated as Key Personnel for that Statement of Work.
- (c) The State reserves the right to recommend and approve in writing the initial assignment, as well as any proposed reassignment or replacement, of any Key Personnel. Before assigning an individual to any Key Personnel position, Contractor must notify the State of the proposed assignment, must introduce the individual to the appropriate State representatives, and must provide the State with a resume and any other information about the individual reasonably requested by the State. The State reserves the right to interview the individual before granting written approval. In the event the State finds a proposed individual unacceptable, the State must provide a written explanation including reasonable detail outlining the reasons for the rejection.
- (d) Contractor must not remove any Key Personnel from their assigned roles on the Contract without the prior written consent of the State. The Contractor's removal of Key Personnel without the prior written consent of the State is an unauthorized removal ("Unauthorized Removal"). Unauthorized Removals does not include replacing Key Personnel for reasons beyond the reasonable control of Contractor, including illness, disability, leave of absence, personal emergency circumstances, resignation or for cause termination of the Key Personnel's employment. Unauthorized Removals does not include replacing Key Personnel because of promotions or other job movements allowed by Contractor personnel policies or Collective Bargaining Agreement(s) as long as the State receives prior written notice before shadowing occurs and Contractor provides 30 days of shadowing unless parties agree to a different time period. The Contractor with the State must review any Key Personnel replacements and appropriate transition planning must be established. Any Unauthorized Removal may be considered by the State to be a material breach of the Contract, in respect of which the State may elect to exercise its termination and cancellation rights.
- (e) The Contractor must notify the Contract Compliance Inspector and the Contract Administrator at least 10 business days before redeploying non-Key Personnel, who are dedicated to primarily to the Project, to other projects. If the State does not object to the redeployment by its scheduled date, the Contractor may then redeploy the non-Key Personnel.

2.063 Re-assignment of Personnel at the State's Request

The State reserves the right to require the removal from the Project of Contractor personnel found, in the judgment of the State, to be unacceptable. The State's request must be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request must be based on legitimate, good-faith reasons. Replacement personnel for the removed person must be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed personnel, the State agrees to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any incident with removed personnel results in delay not reasonably anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Service will not be counted for a time as agreed to by the parties.

2.064 Contractor Personnel Location

All staff assigned by Contractor to work on the Contract must perform their duties either primarily at Contractor's offices and facilities or at State facilities. Without limiting the generality of the foregoing, Key



Personnel must, at a minimum, spend at least the amount of time on-site at State facilities as indicated in the applicable Statement of Work. Subject to availability, selected Contractor personnel may be assigned office space to be shared with State personnel.

2.065 Contractor Identification

Contractor employees must be clearly identifiable while on State property by wearing a State-issued badge, as required. Contractor employees are required to clearly identify themselves and the company they work for whenever making contact with State personnel by telephone or other means.

2.066 Cooperation with Third Parties

Contractor must cause its personnel and the personnel of any Subcontractors to cooperate with the State and its agents and other contractors including the State's Quality Assurance personnel. As reasonably requested by the State in writing, the Contractor must provide to the State's agents and other contractors reasonable access to Contractor's Project personnel, systems and facilities to the extent the access relates to activities specifically associated with the Contract and will not interfere or jeopardize the safety or operation of the systems or facilities. The State acknowledges that Contractor's time schedule for the Contract is very specific and must not unnecessarily or unreasonably interfere with, delay, or otherwise impede Contractor's performance under the Contract with the requests for access.

2.067 Contractor Return of State Equipment/Resources

The Contractor must return to the State any State-furnished equipment, facilities, and other resources when no longer required for the Contract in the same condition as when provided by the State, reasonable wear and tear excepted.

2.068 Contract Management Responsibilities

The Contractor must assume responsibility for all contractual activities, whether or not that Contractor performs them. Further, the State considers the Contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the anticipated Contract. If any part of the work is to be subcontracted, the Contract must include a list of Subcontractors, including firm name and address, contact person and a complete description of work to be subcontracted. The State reserves the right to approve Subcontractors and to require the Contractor to replace Subcontractors found to be unacceptable. The Contractor is totally responsible for adherence by the Subcontractor to all provisions of the Contract. Any change in Subcontractors must be approved by the State, in writing, prior to such change.

2.070 Subcontracting by Contractor

2.071 Contractor Full Responsibility

Contractor has full responsibility for the successful performance and completion of all of the Services and Deliverables. The State will consider Contractor to be the sole point of contact with regard to all contractual matters under the Contract, including payment of any and all charges for Services and Deliverables.

2.072 State Consent to Delegation

Contractor must not delegate any duties under the Contract to a Subcontractor unless the MDCH Grants and Purchasing Division has given written consent to such delegation. The State reserves the right of prior written approval of all Subcontractors and to require Contractor to replace any Subcontractors found, in the reasonable judgment of the State, to be unacceptable. The State's request must be written with reasonable detail outlining the reasons for the removal request. Additionally, the State's request must be based on legitimate, good-faith reasons. Replacement Subcontractor(s) for the removed Subcontractor must be fully qualified for the position. If the State exercises this right, and the Contractor cannot immediately replace the removed Subcontractor, the State will agree to an equitable adjustment in schedule or other terms that may be affected by the State's required removal. If any such incident with a removed Subcontractor results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLA for the affected Work will not be counted for a time agreed upon by the parties.



2.073 Subcontractor Bound to Contract

In any subcontracts entered into by Contractor for the performance of the Services, Contractor must require the Subcontractor, to the extent of the Services to be performed by the Subcontractor, to be bound to Contractor by the terms of the Contract and to assume toward Contractor all of the obligations and responsibilities that Contractor, by the Contract, assumes toward the State. The State reserves the right to receive copies of and review all subcontracts, although Contractor may delete or mask any proprietary information, including pricing, contained in such contracts before providing them to the State. The management of any Subcontractor is the responsibility of Contractor, and Contractor must remain responsible for the performance of its Subcontractors to the same extent as if Contractor had not subcontracted such performance. Contractor must make all payments to Subcontractors or suppliers of Contractor. Except as otherwise agreed in writing by the State and Contractor, the State will not be obligated to direct payments for the Services other than to Contractor. The State's written approval of any Subcontractor engaged by Contractor to perform any obligation under the Contract will not relieve Contractor of any obligations or performance required under the Contract.

2.074 Flow Down

Except where specifically approved in writing by the State on a case-by-case basis, Contractor must flow down the obligations in **Sections 2.031, 2.060, 2.100, 2.110, 2.120, 2.130, 2.200** in all of its agreements with any Subcontractors.

2.075 Competitive Selection

The Contractor must select Subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the Contract.

2.080 State Responsibilities

2.081 Equipment

The State must provide only the equipment and resources identified in the Statements of Work and other Contract Exhibits.

2.082 Facilities

The State must designate space as long as it is available and as provided in the Statement of Work, to house the Contractor's personnel whom the parties agree will perform the Services/Deliverables at State facilities (collectively, the "State Facilities"). The Contractor must have reasonable access to, and, unless agreed otherwise by the parties in writing, must observe and comply with all rules and regulations relating to each of the State Facilities (including hours of operation) used by the Contractor in the course of providing the Services. Contractor must not, without the prior written consent of the State, use any State Facilities or access any State information systems provided for the Contractor's use, or to which the Contractor otherwise gains access in the course of performing the Services, for any purpose other than providing the Services to the State.

2.090 Security

2.091 Background Checks

On a case-by-case basis, the State may investigate the Contractor's personnel before they may have access to State facilities and systems. The scope of the background check is at the discretion of the State and the results will be used to determine Contractor personnel eligibility for working within State facilities and systems. The investigations will include Michigan State Police Background checks (ICHAT) and may include the National Crime Information Center (NCIC) Finger Prints. Proposed Contractor personnel may be required to complete and submit an RI-8 Fingerprint Card for the NCIC Finger Print Check. Any request for background checks will be initiated by the State and will be reasonably related to the type of work requested.

2.092 Security Breach Notification

If the Contractor breaches this Section, the Contractor must (i) promptly cure any deficiencies and (ii) comply with any applicable federal and state laws and regulations pertaining to unauthorized disclosures. Contractor and the State will cooperate to mitigate, to the extent practicable, the effects of any breach, intrusion, or unauthorized use or disclosure. Contractor must report to the State, in writing, any use or disclosure of Confidential Information, whether suspected or actual, other than as provided for by the



Contract within 72 hours of becoming aware of the use or disclosure or the shorter time period as is reasonable under the circumstances.

2.093 PCI Data Security Standard

- (a) Contractors that process, transmit or store credit/debit cardholder data, must adhere to the Payment Card Industry (PCI) Data Security Standards. The Contractor is responsible for the security of cardholder data in its possession. The data may only be used to assist the State or for other uses specifically authorized by law.
- (b) The Contractor must notify the CCI (within 72 hours of discovery) of any breaches in security where cardholder data has been compromised. In that event, the Contractor must provide full cooperation to the Visa, MasterCard, Discover and state Acquirer representative(s), and/or a PCI approved third party to conduct a thorough security review. The Contractor must make the forensic report available within two weeks of completion. The review must validate compliance with the current PCI Data Security Standards for protecting cardholder data.
- (c) The Contractor must properly dispose of cardholder data, in compliance with DTMB policy, when it is no longer needed. The Contractor must continue to treat cardholder data as confidential upon contract termination.
- (d) The Contractor must provide the CCI with an annual Attestation of Compliance (AOC) or a Report on Compliance (ROC) showing the contractor is in compliance with the PCI Data Security Standards. The Contractor must notify the CCI of all failures to comply with the PCI Data Security Standard.

2.100 Confidentiality

2.101 Confidentiality

Contractor and the State each acknowledge that the other possesses, and will continue to possess, confidential information that has been developed or received by it. As used in this Section, "Confidential Information" of Contractor must mean all non-public proprietary information of Contractor (other than Confidential Information of the State as defined below) which is marked confidential, restricted, proprietary, or with a similar designation. "Confidential Information" of the State must mean any information which is retained in confidence by the State (or otherwise required to be held in confidence by the State under applicable federal, state and local laws and regulations) or which, in the case of tangible materials provided to Contractor by the State under its performance under the Contract, is marked as confidential, proprietary, or with a similar designation by the State. "Confidential Information" excludes any information (including the Contract) that is publicly available under the Michigan FOIA.

2.102 Protection and Destruction of Confidential Information

The State and Contractor must each use at least the same degree of care to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication, or dissemination of its own confidential information of like character, but in no event less than reasonable care. Neither Contractor nor the State will (i) make any use of the Confidential Information of the other except as contemplated by the Contract, (ii) acquire any right in or assert any lien against the Confidential Information of the other, or (iii) if requested to do so, refuse for any reason to promptly return the other party's Confidential Information to the other party. Each party must limit disclosure of the other party's Confidential Information to employees and Subcontractors who must have access to fulfill the purposes of the Contract. Disclosure to, and use by, a Subcontractor is permissible where (A) use of a Subcontractor is authorized under the Contract, (B) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the Subcontractor's scope of responsibility, and (C) Contractor obligates the Subcontractor in a written Contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor and of any Subcontractor having access or continued access to the State's Confidential Information may be required to execute an acknowledgment that the employee has been advised of Contractor's and the Subcontractor's obligations under this Section and of the employee's obligation to Contractor or Subcontractor, as the case may be, to protect the Confidential Information from unauthorized use or disclosure.

Promptly upon termination or cancellation of the Contract for any reason, Contractor must certify to the State that Contractor has destroyed all State Confidential Information.



2.103 Exclusions

Notwithstanding the foregoing, the provisions of **Section 2.100** will not apply to any particular information which the State or Contractor can demonstrate (i) was, at the time of disclosure to it, in the public domain; (ii) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of the receiving party; (iii) was in the possession of the receiving party at the time of disclosure to it without an obligation of confidentiality; (iv) was received after disclosure to it from a third party who had a lawful right to disclose the information to it without any obligation to restrict its further disclosure; or (v) was independently developed by the receiving party without reference to Confidential Information of the furnishing party. Further, the provisions of **Section 2.100** will not apply to any particular Confidential Information to the extent the receiving party is required by law to disclose the Confidential Information, provided that the receiving party (i) promptly provides the furnishing party with notice of the legal request, and (ii) assists the furnishing party in resisting or limiting the scope of the disclosure as reasonably requested by the furnishing party.

2.104 No Implied Rights

Nothing contained in this Section must be construed as obligating a party to disclose any particular Confidential Information to the other party, or as granting to or conferring on a party, expressly or impliedly, any right or license to the Confidential Information of the other party.

2.105 Respective Obligations

The parties' respective obligations under this Section must survive the termination or expiration of the Contract for any reason.

2.110 Records and Inspections

2.111 Inspection of Work Performed

The State's authorized representatives, at reasonable times and with 10 days prior notice, have the right to enter the Contractor's premises or any other places where work is being performed in relation to this Contract. The representatives may inspect, monitor, or evaluate the work being performed, to the extent the access will not reasonably interfere with or jeopardize the safety or operation of Contractor's systems or facilities. The Contractor must provide reasonable assistance for the State's representatives during inspections.

2.112 Retention of Records

- (a) The Contractor must retain all financial and accounting records related to this Contract for a period of 7 years after the Contractor performs any work under this Contract (Audit Period).
- (b) If an audit, litigation, or other action involving the Contractor's records is initiated before the end of the Audit Period, the Contractor must retain the records until all issues arising out of the audit, litigation, or other action are resolved or until the end of the Audit Period, whichever is later.

2.113 Examination of Records

- (a) The State, upon 10 days notice to the Contractor, may examine and copy any of the Contractor's records that relate to this Contract any time during the Audit Period. The State does not have the right to review any information deemed confidential by the Contractor if access would require the information to become publicly available. This requirement also applies to the records of any parent, affiliate, or subsidiary organization of the Contractor, or any Subcontractor that performs services in connection with this Contract.

(b) In addition to the rights conferred upon the State in paragraph (a) of this section and in accordance with MCL 18.1470, DTMB or its designee may audit the Contractor to verify compliance with the Contract. The financial and accounting records associated with the Contract shall be made available to DTMB or its designee and the auditor general, upon request, during the term of the Contract and any extension of the Contract and for 3 years after the later of the expiration date or final payment under the Contract.

2.114 Audit Resolution

If necessary, the Contractor and the State will meet to review any audit report promptly after its issuance. The Contractor must respond to each report in writing within 30 days after receiving the report, unless the



report specifies a shorter response time. The Contractor and the State must develop, agree upon, and monitor an action plan to promptly address and resolve any deficiencies, concerns, or recommendations in the report.

2.115 Errors

(a) If an audit reveals any financial errors in the records provided to the State, the amount in error must be reflected as a credit or debit on the next invoice and subsequent invoices until the amount is paid or refunded in full. However, a credit or debit may not be carried forward for more than four invoices or beyond the termination of the Contract. If a balance remains after four invoices, the remaining amount will be due as a payment or refund within 45 days of the last invoice on which the balance appeared or upon termination of the Contract, whichever is earlier.

(b) In addition to other available remedies, if the difference between the State's actual payment and the correct invoice amount, as determined by an audit, is greater than 10%, the Contractor must pay all reasonable audit costs.

2.120 Warranties

2.121 Warranties and Representations

The Contractor represents and warrants:

(a) It is capable in all respects of fulfilling and must fulfill all of its obligations under the Contract. The performance of all obligations under the Contract must be provided in a timely, professional, and workman-like manner and must meet the performance and operational standards required under the Contract.

(b) The Contract Appendices, Attachments and Exhibits identify the equipment and software and services necessary for the Deliverable(s) to perform and Services to operate in compliance with the Contract's requirements and other standards of performance.

(c) It is the lawful owner or licensee of any Deliverable licensed or sold to the State by Contractor or developed by Contractor under the Contract, and Contractor has all of the rights necessary to convey to the State the ownership rights or licensed use, as applicable, of any and all Deliverables. None of the Deliverables provided by Contractor to the State under the Contract, nor their use by the State, will infringe the patent, copyright, trade secret, or other proprietary rights of any third party.

(d) If, under the Contract, Contractor procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Contractor under Contractor's name), then in addition to Contractor's other responsibilities with respect to the items in the Contract, Contractor must assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable.

(e) The Contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter into the Contract, on behalf of Contractor.

(f) It is qualified and registered to transact business in all locations where required.

(g) Neither the Contractor nor any affiliates, nor any employee of either, has, must have, or must acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under the Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor must notify the State about the nature of the conflict or appearance of impropriety within two (2) days of learning about it.

(h) If any of the certifications, representations, or disclosures made in the Contractor's original bid response change after the Contract start date, the Contractor must report those changes immediately to MDCH Grants and Purchasing Division.

2.122 Warranty of Merchantability

Goods provided by Contractor under this agreement must be merchantable. All goods provided under the Contract must be of good quality within the description given by the State, must be fit for their ordinary purpose, must be adequately contained and packaged within the description given by the State, must conform to the agreed upon specifications, and must conform to the affirmations of fact made by the Contractor or on the container or label.

**2.123 Warranty of Fitness for a Particular Purpose**

When the Contractor has reason to know or knows any particular purpose for which the goods are required, and the State is relying on the Contractor's skill or judgment to select or furnish suitable goods, there is a warranty that the goods are fit for such purpose.

2.124 Warranty of Title

Contractor must, in providing goods to the State, convey good title in those goods, whose transfer is right and lawful. All goods provided by Contractor must be delivered free from any security interest, lien, or encumbrance of which the State, at the time of contracting, has no knowledge. Goods provided by Contractor, under the Contract, must be delivered free of any rightful claim of any third person by of infringement or the like.

2.125 Equipment Warranty—Deleted/Not Applicable**2.126 Equipment to be New**

If applicable, all equipment provided under the Contract by Contractor must be new where Contractor has knowledge regarding whether the equipment is new or assembled from new or serviceable used parts that are like new in performance or has the option of selecting one or the other. Equipment that is assembled from new or serviceable used parts that are like new in performance is acceptable where Contractor does not have knowledge or the ability to select one or other, unless specifically agreed otherwise in writing by the State.

2.127 Prohibited Products

The State will not accept salvage, distressed, outdated or discontinued merchandise. Shipping of such merchandise to any State agency, as a result of an order placed against the Contract, is considered default by the Contractor of the terms and conditions of the Contract and may result in cancellation of the Contract by the State. The brand and product number offered for all items must remain consistent for the term of the Contract, unless MDCH Grants and Purchasing Division has approved a change order pursuant to **Section 2.024**.

2.128 Consequences For Breach

In addition to any remedies available in law, if the Contractor breaches any of the warranties contained in this section, the breach may be considered as a default in the performance of a material obligation of the Contract.

2.130 Insurance**2.131 Liability Insurance**

The Contractor must provide proof of the minimum levels of insurance coverage as indicated below. The insurance must protect the State from claims which may arise out of or result from the Contractor's performance of Services under the terms of the Contract, whether the Services are performed by the Contractor, or by any Subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

The Contractor waives all rights against the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents for recovery of damages to the extent these damages are covered by the insurance policies the Contractor is required to maintain under the Contract.

All insurance coverage's provided relative to the Contract/Purchase Order are PRIMARY and NON-CONTRIBUTING to any comparable liability insurance (including self-insurances) carried by the State.

The insurance must be written for not less than any minimum coverage specified in the Contract or required by law, whichever is greater.

The insurers selected by Contractor must have an A.M. Best rating of A or better, or as otherwise approved in writing by the State, or if the ratings are no longer available, with a comparable rating from a recognized insurance rating agency. All policies of insurance required in the Contract must be issued by companies that have been approved to do business in the State. See www.michigan.gov/deleg.



Where specific limits are shown, they are the minimum acceptable limits. If Contractor's policy contains higher limits, the State must be entitled to coverage to the extent of the higher limits.

The Contractor is required to pay for and provide the type and amount of insurance checked ☒ below:

- ☒ 1. Commercial General Liability with the following minimum coverage:
 \$2,000,000 General Aggregate Limit other than Products/Completed Operations
 \$2,000,000 Products/Completed Operations Aggregate Limit
 \$1,000,000 Personal & Advertising Injury Limit
 \$1,000,000 Each Occurrence Limit

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSURED on the Commercial General Liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

- ☒ 2. If a motor vehicle is used to provide services or products under the Contract, the Contractor must have vehicle liability insurance on any auto including owned, hired and non-owned vehicles used in Contractor's business for bodily injury and property damage as required by law.

The Contractor must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSURED on the vehicle liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

- ☒ 3. Workers' compensation coverage must be provided according to applicable laws governing the employees and employers work activities in the state of the Contractor's domicile. If the applicable coverage is provided by a self-insurer, proof must be provided of approved self-insured authority by the jurisdiction of domicile. For employees working outside of the state of qualification, Contractor must provide appropriate certificates of insurance proving mandated coverage levels for the jurisdictions where the employees' activities occur.

Any certificates of insurance received must also provide a list of states where the coverage is applicable.

The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company. This provision must not be applicable where prohibited or limited by the laws of the jurisdiction in which the work is to be performed.

- ☒ 4. Employers liability insurance with the following minimum limits:
 \$100,000 each accident
 \$100,000 each employee by disease
 \$500,000 aggregate disease

- ☐ 5. Employee Fidelity, including Computer Crimes, insurance naming the State as a loss payee, providing coverage for direct loss to the State and any legal liability of the State arising out of or related to fraudulent or dishonest acts committed by the employees of Contractor or its Subcontractors, acting alone or in collusion with others, in a minimum amount of \$1,000,000.00 with a maximum deductible of \$50,000.00.

- ☐ 6. Umbrella or Excess Liability Insurance in a minimum amount of ten million dollars (\$10,000,000.00), which must apply, at a minimum, to the insurance required in Subsection 1 (Commercial General Liability) above.

- ☐ 7. Professional Liability (Errors and Omissions) Insurance with the following minimum coverage: \$3,000,000.00 each occurrence and \$3,000,000.00 annual aggregate.

- ☐ 8. Fire and Personal Property Insurance covering against any loss or damage to the office space used by Contractor for any reason under the Contract, and the equipment, software and other contents of the office space, including without limitation, those contents used by Contractor to provide the Services to the State, up to its replacement value, where the office space and its contents are under the care, custody and control of Contractor. The policy must cover all risks of direct physical loss or damage, including without limitation, flood and earthquake coverage and coverage for computer hardware and software. The State must be endorsed on the policy as a loss payee as its interests appear.

2.132 Subcontractor Insurance Coverage



Except where the State has approved in writing a Contractor subcontract with other insurance provisions, Contractor must require all of its Subcontractors under the Contract to purchase and maintain the insurance coverage as described in this Section for the Contractor in connection with the performance of work by those Subcontractors. Alternatively, Contractor may include any Subcontractors under Contractor's insurance on the coverage required in this Section. Subcontractor must fully comply with the insurance coverage required in this Section. Failure of Subcontractor to comply with insurance requirements does not limit Contractor's liability or responsibility.

2.133 Certificates of Insurance and Other Requirements

Contractor must furnish to MDCH Grants and Purchasing Division, certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this Section (the "Certificates"). The Certificate must be on the standard "accord" form or equivalent. **THE CONTRACT OR PURCHASE ORDER NO. MUST BE SHOWN ON THE CERTIFICATE OF INSURANCE TO ASSURE CORRECT FILING.** All Certificate(s) are to be prepared and submitted by the Insurance Provider. All Certificate(s) must contain a provision indicating that coverages afforded under the policies **MUST NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED** without 30 days prior written notice, except for 10 days for non-payment of premium, having been given to the Director of MDCH Grants and Purchasing Division. The notice must include the Contract or Purchase Order number affected. Before the Contract is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor must provide evidence that the State and its agents, officers and employees are listed as additional insureds under each commercial general liability and commercial automobile liability policy. In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

The Contractor must maintain all required insurance coverage throughout the term of the Contract and any extensions and, in the case of claims-made Commercial General Liability policies, must secure tail coverage for at least three (3) years following the expiration or termination for any reason of the Contract. The minimum limits of coverage specified above are not intended, and must not be construed, to limit any liability or indemnity of Contractor under the Contract to any indemnified party or other persons. Contractor is responsible for all deductibles with regard to the insurance. If the Contractor fails to pay any premium for required insurance as specified in the Contract, or if any insurer cancels or significantly reduces any required insurance as specified in the Contract without the State's written consent, then the State may, after the State has given the Contractor at least 30 days written notice, pay the premium or procure similar insurance coverage from another company or companies. The State may deduct any part of the cost from any payment due the Contractor, or the Contractor must pay that cost upon demand by the State.

2.140 Indemnification

2.141 General Indemnification

To the extent permitted by law, the Contractor must indemnify, defend and hold harmless the State from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties), accruing or resulting to any person, firm or corporation that may be injured or damaged by the Contractor in the performance of the Contract and that are attributable to the negligence or tortious acts of the Contractor or any of its Subcontractors, or by anyone else for whose acts any of them may be liable.

2.142 Code Indemnification

To the extent permitted by law, the Contractor must indemnify, defend and hold harmless the State from any claim, loss, or expense arising from Contractor's breach of the No Surreptitious Code Warranty.

2.143 Employee Indemnification

In any claims against the State of Michigan, its departments, divisions, agencies, sections, commissions, officers, employees and agents, by any employee of the Contractor or any of its Subcontractors, the indemnification obligation under the Contract must not be limited in any way by the amount or type of damages, compensation or benefits payable by or for the Contractor or any of its Subcontractors under worker's disability compensation acts, disability benefit acts or other employee benefit acts. This indemnification clause is intended to be comprehensive. Any overlap in provisions, or the fact that greater



specificity is provided as to some categories of risk, is not intended to limit the scope of indemnification under any other provisions.

2.144 Patent/Copyright Infringement Indemnification

To the extent permitted by law, the Contractor must indemnify, defend and hold harmless the State from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties) incurred in connection with any action or proceeding threatened or brought against the State to the extent that the action or proceeding is based on a claim that any piece of equipment, software, commodity or service supplied by the Contractor or its Subcontractors, or the operation of the equipment, software, commodity or service, or the use or reproduction of any documentation provided with the equipment, software, commodity or service infringes any United States patent, copyright, trademark or trade secret of any person or entity, which is enforceable under the laws of the United States.

In addition, should the equipment, software, commodity, or service, or its operation, become or in the State's or Contractor's opinion be likely to become the subject of a claim of infringement, the Contractor must at the Contractor's sole expense (i) procure for the State the right to continue using the equipment, software, commodity or service or, if the option is not reasonably available to the Contractor, (ii) replace or modify to the State's satisfaction the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if the option is not reasonably available to Contractor, (iii) accept its return by the State with appropriate credits to the State against the Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

Notwithstanding the foregoing, the Contractor has no obligation to indemnify or defend the State for, or to pay any costs, damages or attorneys' fees related to, any claim based upon (i) equipment developed based on written specifications of the State; (ii) use of the equipment in a configuration other than implemented or approved in writing by the Contractor, including, but not limited to, any modification of the equipment by the State; or (iii) the combination, operation, or use of the equipment with equipment or software not supplied by the Contractor under the Contract.

2.145 Continuation of Indemnification Obligations

The Contractor's duty to indemnify under this Section continues in full force and effect, notwithstanding the expiration or early cancellation of the Contract, with respect to any claims based on facts or conditions that occurred before expiration or cancellation.

2.146 Indemnification Procedures

The procedures set forth below must apply to all indemnity obligations under the Contract.

(a) After the State receives notice of the action or proceeding involving a claim for which it will seek indemnification, the State must promptly notify Contractor of the claim in writing and take or assist Contractor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against Contractor. No failure to notify the Contractor relieves the Contractor of its indemnification obligations except to the extent that the Contractor can prove damages attributable to the failure. Within 10 days following receipt of written notice from the State relating to any claim, the Contractor must notify the State in writing whether Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying Contractor of a claim and before the State receiving Contractor's Notice of Election, the State is entitled to defend against the claim, at the Contractor's expense, and the Contractor will be responsible for any reasonable costs incurred by the State in defending against the claim during that period.

(b) If Contractor delivers a Notice of Election relating to any claim: (i) the State is entitled to participate in the defense of the claim and to employ counsel at its own expense to assist in the handling of the claim and to monitor and advise the State about the status and progress of the defense; (ii) the Contractor must, at the request of the State, demonstrate to the reasonable satisfaction of the State, the Contractor's financial ability to carry out its defense and indemnity obligations under the Contract; (iii) the Contractor must periodically advise the State about the status and progress of the defense and must obtain the prior written approval of the State before entering into any settlement of the claim or ceasing to defend against the claim and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State has the right, at its own expense, to control the defense of that



portion of the claim involving the principles of Michigan governmental or public law. But the State may retain control of the defense and settlement of a claim by notifying the Contractor in writing within 10 days after the State's receipt of Contractor's information requested by the State under clause (ii) of this paragraph if the State determines that the Contractor has failed to demonstrate to the reasonable satisfaction of the State the Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents the State under this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

(c) If Contractor does not deliver a Notice of Election relating to any claim of which it is notified by the State as provided above, the State may defend the claim in the manner as it may deem appropriate, at the cost and expense of Contractor. If it is determined that the claim was one against which Contractor was required to indemnify the State, upon request of the State, Contractor must promptly reimburse the State for all the reasonable costs and expenses.

2.150 Termination/Cancellation

2.151 Notice and Right to Cure

If the Contractor breaches the Contract, and the State, in its sole discretion, determines that the breach is curable, then the State must provide the Contractor with written notice of the breach and a time period (not less than 30 days) to cure the Breach. The notice of breach and opportunity to cure is inapplicable for successive or repeated breaches or if the State determines in its sole discretion that the breach poses a serious and imminent threat to the health or safety of any person or the imminent loss, damage, or destruction of any real or tangible personal property.

2.152 Termination for Cause

(a) The State may terminate the Contract, for cause, by notifying the Contractor in writing, if the Contractor (i) breaches any of its material duties or obligations under the Contract (including a Chronic Failure to meet any particular SLA), or (ii) fails to cure a breach within the time period specified in the written notice of breach provided by the State

(b) If the Contract is terminated for cause, the Contractor must pay all costs incurred by the State in terminating the Contract, including but not limited to, State administrative costs, reasonable attorneys' fees and court costs, and any reasonable additional costs the State may incur to procure the Services/Deliverables required by the Contract from other sources. Re-procurement costs are not consequential, indirect or incidental damages, and cannot be excluded by any other terms otherwise included in the Contract, provided the costs are not in excess of 50% more than the prices for the Service/Deliverables provided under the Contract.

(c) If the State chooses to partially terminate the Contract for cause, charges payable under the Contract will be equitably adjusted to reflect those Services/Deliverables that are terminated and the State must pay for all Services/Deliverables for which Final Acceptance has been granted provided up to the termination date. Services and related provisions of the Contract that are terminated for cause must cease on the effective date of the termination.

(d) If the State terminates the Contract for cause under this Section, and it is determined, for any reason, that Contractor was not in breach of contract under the provisions of this section, that termination for cause must be deemed to have been a termination for convenience, effective as of the same date, and the rights and obligations of the parties must be limited to that otherwise provided in the Contract for a termination for convenience.

2.153 Termination for Convenience

The State may terminate the Contract for its convenience, in whole or part, if the State determines that a termination is in the State's best interest. Reasons for the termination must be left to the sole discretion of the State and may include, but not necessarily be limited to (a) the State no longer needs the Services or products specified in the Contract, (b) relocation of office, program changes, changes in laws, rules, or regulations make implementation of the Services no longer practical or feasible, (c) unacceptable prices for Additional Services or New Work requested by the State, or (d) falsification or misrepresentation, by inclusion or non-inclusion, of information material to a response to any RFP issued by the State. The State may terminate the Contract for its convenience, in whole or in part, by giving Contractor written notice at least 30 days before the date of termination. If the State chooses to terminate the Contract in



part, the charges payable under the Contract must be equitably adjusted to reflect those Services/Deliverables that are terminated. Services and related provisions of the Contract that are terminated for cause must cease on the effective date of the termination.

2.154 Termination for Non-Appropriation

(a) Contractor acknowledges that, if the Contract extends for several fiscal years, continuation of the Contract is subject to appropriation or availability of funds for the Contract. If funds to enable the State to effect continued payment under the Contract are not appropriated or otherwise made available, the State must terminate the Contract and all affected Statements of Work, in whole or in part, at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to Contractor. The State must give Contractor at least 30 days advance written notice of termination for non-appropriation or unavailability (or the time as is available if the State receives notice of the final decision less than 30 days before the funding cutoff).

(b) If funding for the Contract is reduced by law, or funds to pay Contractor for the agreed-to level of the Services or production of Deliverables to be provided by Contractor are not appropriated or otherwise unavailable, the State may, upon 30 days written notice to Contractor, reduce the level of the Services or the change the production of Deliverables in the manner and for the periods of time as the State may elect. The charges payable under the Contract will be equitably adjusted to reflect any equipment, services or commodities not provided by reason of the reduction.

(c) If the State terminates the Contract, eliminates certain Deliverables, or reduces the level of Services to be provided by Contractor under this Section, the State must pay Contractor for all Work-in-Process performed through the effective date of the termination or reduction in level, as the case may be and as determined by the State, to the extent funds are available. This Section will not preclude Contractor from reducing or stopping Services/Deliverables or raising against the State in a court of competent jurisdiction, any claim for a shortfall in payment for Services performed or Deliverables finally accepted before the effective date of termination.

2.155 Termination for Criminal Conviction

The State may terminate the Contract immediately and without further liability or penalty in the event Contractor, an officer of Contractor, or an owner of a 25% or greater share of Contractor is convicted of a criminal offense related to a State, public or private contract or subcontract.

2.156 Termination for Approvals Rescinded

The State may terminate the Contract if any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services under Constitution 1963, Article 11, § 5, and Civil Service Rule 7-1. In that case, the State must pay the Contractor for only the work completed to that point under the Contract. Termination may be in whole or in part and may be immediate as of the date of the written notice to Contractor or may be effective as of the date stated in the written notice.

2.157 Rights and Obligations upon Termination

(a) If the State terminates the Contract for any reason, the Contractor must (a) stop all work as specified in the notice of termination, (b) take any action that may be necessary, or that the State may direct, for preservation and protection of Deliverables or other property derived or resulting from the Contract that may be in Contractor's possession, (c) return all materials and property provided directly or indirectly to Contractor by any entity, agent or employee of the State, (d) transfer title in, and deliver to, the State, unless otherwise directed, all Deliverables intended to be transferred to the State at the termination of the Contract and which are resulting from the Contract (which must be provided to the State on an "As-Is" basis except to the extent the amounts paid by the State in respect of the items included compensation to Contractor for the provision of warranty services in respect of the materials), and (e) take any action to mitigate and limit any potential damages, or requests for Contractor adjustment or termination settlement costs, to the maximum practical extent, including terminating or limiting as otherwise applicable those subcontracts and outstanding orders for material and supplies resulting from the terminated Contract.

(b) If the State terminates the Contract before its expiration for its own convenience, the State must pay Contractor for all charges due for Services provided before the date of termination and, if applicable, as a separate item of payment under the Contract, for Work In Process, on a percentage of completion



basis at the level of completion determined by the State. All completed or partially completed Deliverables prepared by Contractor under the Contract, at the option of the State, becomes the State's property, and Contractor is entitled to receive equitable fair compensation for the Deliverables. Regardless of the basis for the termination, the State is not obligated to pay, or otherwise compensate, Contractor for any lost expected future profits, costs or expenses incurred with respect to Services not actually performed for the State.

(c) Upon a good faith termination, the State may assume, at its option, any subcontracts and agreements for Services and Deliverables provided under the Contract, and may further pursue completion of the Services/Deliverables under the Contract by replacement contract or otherwise as the State may in its sole judgment deem expedient.

2.158 Reservation of Rights

Any termination of the Contract or any Statement of Work issued under it by a party must be with full reservation of, and without prejudice to, any rights or remedies otherwise available to the party with respect to any claims arising before or as a result of the termination.

2.160 Termination by Contractor

2.161 Termination by Contractor—Deleted/Not Applicable

2.170 Transition Responsibilities

2.171 Contractor Transition Responsibilities

If the State terminates the Contract, for convenience or cause, or if the Contract is otherwise dissolved, voided, rescinded, nullified, expires or rendered unenforceable, the Contractor agrees to comply with direction provided by the State to assist in the orderly transition of equipment, services, software, leases, etc. to the State or a third party designated by the State. If the Contract expires or terminates, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time that in no event will exceed 30 days. These efforts must include, but are not limited to, those listed in **Sections 2.171, 2.172, 2.173, 2.174, and 2.175.**

2.172 Contractor Personnel Transition

The Contractor must work with the State, or a specified third party, to develop a transition plan setting forth the specific tasks and schedule to be accomplished by the parties to effect an orderly transition. The Contractor must allow as many personnel as practicable to remain on the job to help the State, or a specified third party, maintain the continuity and consistency of the services required by the Contract. In addition, during or following the transition period, in the event the State requires the Services of the Contractor's Subcontractors or vendors, as necessary to meet its needs, Contractor agrees to reasonably, and with good-faith, work with the State to use the Services of Contractor's Subcontractors or vendors. Contractor must notify all of Contractor's subcontractors of procedures to be followed during transition.

2.173 Contractor Information Transition

The Contractor agrees to provide reasonable detailed specifications for all Services/Deliverables needed by the State, or specified third party, to properly provide the Services/Deliverables required under the Contract. The Contractor must provide the State with asset management data generated from the inception of the Contract through the date on which the Contractor is terminated in a comma-delineated format unless otherwise requested by the State. The Contractor must deliver to the State any remaining owed reports and documentation still in Contractor's possession subject to appropriate payment by the State.

2.174 Contractor Software Transition

The Contractor must reasonably assist the State in the acquisition of any Contractor software required to perform the Services/use the Deliverables under the Contract. This must include any documentation being used by the Contractor to perform the Services under the Contract. If the State transfers any software licenses to the Contractor, those licenses must, upon expiration of the Contract, transfer back to the State at their current revision level. Upon notification by the State, Contractor may be required to freeze all non-critical changes to Deliverables/Services.

2.175 Transition Payments



If the transition results from a termination for any reason, reimbursement must be governed by the termination provisions of the Contract. If the transition results from expiration, the Contractor will be reimbursed for all reasonable transition costs (i.e. costs incurred within the agreed period after contract expiration that result from transition operations) at the rates agreed upon by the State. The Contractor must prepare an accurate accounting from which the State and Contractor may reconcile all outstanding accounts.

2.176 State Transition Responsibilities

In the event that the Contract is terminated, dissolved, voided, rescinded, nullified, or otherwise rendered unenforceable, the State agrees to perform the following obligations, and any others upon which the State and the Contractor agree:

- (a) Reconciling all accounts between the State and the Contractor;
- (b) Completing any pending post-project reviews.

2.180 Stop Work

2.181 Stop Work Orders

The State may, at any time, by written stop work order to Contractor, require that Contractor stop all, or any part, of the work called for by the Contract for a period of up to 90 calendar days after the stop work order is delivered to Contractor, and for any further period to which the parties may agree. The stop work order must be identified as a stop work order and must indicate that it is issued under this **Section 2.180**. Upon receipt of the stop work order, Contractor must immediately comply with its terms and take all reasonable steps to minimize incurring costs allocable to the work covered by the stop work order during the period of work stoppage. Within the period of the stop work order, the State must either: (a) cancel the stop work order; or (b) terminate the work covered by the stop work order as provided in **Section 2.150**.

2.182 Cancellation or Expiration of Stop Work Order

The Contractor must resume work if the State cancels a Stop Work Order or if it expires. The parties will agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract must be modified, in writing, accordingly, if: (a) the stop work order results in an increase in the time required for, or in Contractor's costs properly allocable to, the performance of any part of the Contract; and (b) Contractor asserts its right to an equitable adjustment within 30 calendar days after the end of the period of work stoppage; provided that, if the State decides the facts justify the action, the State may receive and act upon a Contractor proposal submitted at any time before final payment under the Contract. Any adjustment must conform to the requirements of **Section 2.024**.

2.183 Allowance of Contractor Costs

If the stop work order is not canceled and the work covered by the stop work order is terminated for reasons other than material breach, the termination must be deemed to be a termination for convenience under **Section 2.150**, and the State will pay reasonable costs resulting from the stop work order in arriving at the termination settlement. For the avoidance of doubt, the State is not liable to Contractor for loss of profits because of a stop work order issued under this **Section 2.180**.

2.190 Dispute Resolution

2.191 In General

Any claim, counterclaim, or dispute between the State and Contractor arising out of or relating to the Contract or any Statement of Work must be resolved as follows. For all Contractor claims seeking an increase in the amounts payable to Contractor under the Contract, or the time for Contractor's performance, Contractor must submit a letter, together with all data supporting the claims, executed by Contractor's Contract Administrator or the Contract Administrator's designee certifying that (a) the claim is made in good faith, (b) the amount claimed accurately reflects the adjustments in the amounts payable to Contractor or the time for Contractor's performance for which Contractor believes the State is liable and covers all costs of every type to which Contractor is entitled from the occurrence of the claimed event, and (c) the claim and the supporting data are current and complete to Contractor's best knowledge and belief.

2.192 Informal Dispute Resolution

- (a) All disputes between the parties must be resolved under the Contract Management procedures in the Contract. If the parties are unable to resolve any disputes after compliance with the processes, the



parties must meet with the Director of MDCH Grants and Purchasing Division, or designee, for the purpose of attempting to resolve the dispute without the need for formal legal proceedings, as follows:

- (i) The representatives of Contractor and the State must meet as often as the parties reasonably deem necessary to gather and furnish to each other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives must discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding.
 - (ii) During the course of negotiations, all reasonable requests made by one (1) party to another for non-privileged information reasonably related to the Contract must be honored in order that each of the parties may be fully advised of the other's position.
 - (iii) The specific format for the discussions will be left to the discretion of the designated State and Contractor representatives, but may include the preparation of agreed upon statements of fact or written statements of position.
 - (iv) Following the completion of this process within 60 calendar days, the Director of MDCH Grants and Purchasing Division, or designee, must issue a written opinion regarding the issue(s) in dispute within 30 calendar days. The opinion regarding the dispute must be considered the State's final action and the exhaustion of administrative remedies.
- (b) This Section must not be construed to prevent either party from instituting, and a party is authorized to institute, formal proceedings earlier to avoid the expiration of any applicable limitations period, to preserve a superior position with respect to other creditors, or under **Section 2.193**.
- (c) The State will not mediate disputes between the Contractor and any other entity, except state agencies, concerning responsibility for performance of work under the Contract.

2.193 Injunctive Relief

The only circumstance in which disputes between the State and Contractor will not be subject to the provisions of **Section 2.192** is where a party makes a good faith determination that a breach of the terms of the Contract by the other party is the that the damages to the party resulting from the breach will be so immediate, so large or severe and so incapable of adequate redress after the fact that a temporary restraining order or other immediate injunctive relief is the only adequate remedy.

2.194 Continued Performance

Each party agrees to continue performing its obligations under the Contract while a dispute is being resolved except to the extent the issue in dispute precludes performance (dispute over payment must not be deemed to preclude performance) and without limiting either party's right to terminate the Contract as provided in **Section 2.150**, as the case may be.

2.200 Federal and State Contract Requirements

2.201 Nondiscrimination

In the performance of the Contract, Contractor agrees not to discriminate against any employee or applicant for employment, with respect to his or her hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, or physical or mental disability. Contractor further agrees that every subcontract entered into for the performance of the Contract or any purchase order resulting from the Contract must contain a provision requiring non-discrimination in employment, as specified here, binding upon each Subcontractor. This covenant is required under the Elliot Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, et seq., and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, et seq., and any breach of this provision may be regarded as a material breach of the Contract.

2.202 Unfair Labor Practices

Under 1980 PA 278, MCL 423.321, et seq., the State must not award a Contract or subcontract to an employer whose name appears in the current register of employers failing to correct an unfair labor practice compiled under Section 2 of the Act. This information is compiled by the United States National Labor Relations Board. A Contractor of the State, in relation to the Contract, must not enter into a contract with a Subcontractor, manufacturer, or supplier whose name appears in this register. Under Section 4 of 1980 PA 278, MCL 423.324, the State may void any Contract if, after award of the Contract, the name of



Contractor as an employer or the name of the Subcontractor, manufacturer or supplier of Contractor appears in the register.

2.203 Workplace Safety and Discriminatory Harassment

In performing Services for the State, the Contractor must comply with the Department of Civil Services Rule 2-20 regarding Workplace Safety and Rule 1-8.3 regarding Discriminatory Harassment. In addition, the Contractor must comply with Civil Service regulations and any applicable agency rules provided to the Contractor. For Civil Service Rules, see <http://www.mi.gov/mdcs/0,1607,7-147-6877---,00.html>.

2.204 Prevailing Wage

The rates of wages and fringe benefits to be paid each class of individuals employed by the Contractor, its subcontractors, their subcontractors, and all persons involved with the performance of the Contract in privity of contract with the Contractor must not be less than the wage rates and fringe benefits established by the Michigan Department of Licensing and Regulatory Affairs, Wage and Hour Division, schedule of occupational classification and wage rates and fringe benefits for the local where the work is to be performed. The term Contractor must include all general contractors, prime contractors, project managers, trade contractors, and all of their contractors or subcontractors and persons in privity of contract with them.

The Contractor, its subcontractors, their subcontractors and all persons involved with the performance of the Contract in privity of contract with the Contractor must keep posted on the work site, in a conspicuous place, a copy of all wage rates and fringe benefits as prescribed in the contract. You must also post, in a conspicuous place, the address and telephone number of the Michigan Department of Licensing and Regulatory Affairs, the office responsible for enforcement of the wage rates and fringe benefits. The Contractor must keep an accurate record showing the name and occupation of the actual wage and benefits paid to each individual employed in connection with the Contract. This record must be available to the State upon request for reasonable inspection.

If any trade is omitted from the list of wage rates and fringe benefits to be paid to each class of individuals by the Contractor, it is understood that the trades omitted must also be paid not less than the wage rate and fringe benefits prevailing in the local where the work is to be performed.

2.210 Governing Law

2.211 Governing Law

The Contract must in all respects be governed by, and construed according to, the substantive laws of the State of Michigan without regard to any Michigan choice of law rules that would apply the substantive law of any other jurisdiction to the extent not inconsistent with, or pre-empted by federal law.

2.212 Compliance with Laws

Contractor must comply with all applicable state, federal and local laws and ordinances in providing the Services/Deliverables.

2.213 Jurisdiction

Any dispute arising from the Contract must be resolved in the State of Michigan. With respect to any claim between the parties, Contractor consents to venue in Ingham County, Michigan, and irrevocably waives any objections it may have to the jurisdiction on the grounds of lack of personal jurisdiction of the court or the laying of venue of the court or on the basis of forum non conveniens or otherwise. Contractor agrees to appoint agents in the State of Michigan to receive service of process.

2.220 Limitation of Liability

2.221 Limitation of Liability

Neither the Contractor nor the State is liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability does not apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of the Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on the Contract.



The Contractor's liability for damages to the State is limited to two times the value of the Contract or \$500,000 whichever is higher. The foregoing limitation of liability does not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of the Contract calling for liquidated damages; or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on the Contract.

The State's liability for damages to the Contractor is limited to the value of the Contract.

2.230 Disclosure Responsibilities

2.231 Disclosure of Litigation

(a) Disclosure. Contractor must disclose any material criminal litigation, investigations or proceedings involving the Contractor (and each Subcontractor) or any of its officers or directors or any litigation, investigations or proceedings under the Sarbanes-Oxley Act. In addition, each Contractor (and each Subcontractor) must notify the State of any material civil litigation, arbitration or proceeding which arises during the term of the Contract and extensions, to which Contractor (or, to the extent Contractor is aware, any Subcontractor) is a party, and which involves: (i) disputes that might reasonably be expected to adversely affect the viability or financial stability of Contractor or any Subcontractor; or (ii) a claim or written allegation of fraud against Contractor or, to the extent Contractor is aware, any Subcontractor by a governmental or public entity arising out of their business dealings with governmental or public entities. The Contractor must disclose in writing to the Contract Administrator any litigation, investigation, arbitration or other proceeding (collectively, "Proceeding") within 30 days of its occurrence. Details of settlements which are prevented from disclosure by the terms of the settlement may be annotated. Information provided to the State from Contractor's publicly filed documents referencing its material litigation will be deemed to satisfy the requirements of this Section.

(b) Assurances. If any Proceeding disclosed to the State under this Section, or of which the State otherwise becomes aware, during the term of the Contract would cause a reasonable party to be concerned about:

- (i) the ability of Contractor (or a Subcontractor) to continue to perform the Contract according to its terms and conditions, or
- (ii) whether Contractor (or a Subcontractor) in performing Services for the State is engaged in conduct which is similar in nature to conduct alleged in the Proceeding, which conduct would constitute a breach of the Contract or a violation of Michigan law, regulations or public policy, then the Contractor must provide the State all reasonable assurances requested by the State to demonstrate that:
 - (a) Contractor and its Subcontractors must be able to continue to perform the Contract and any Statements of Work according to its terms and conditions, and
 - (b) Contractor and its Subcontractors have not and will not engage in conduct in performing the Services which is similar in nature to the conduct alleged in the Proceeding.

(c) Contractor must make the following notifications in writing:

- (1) Within 30 days of Contractor becoming aware that a change in its ownership or officers has occurred, or is certain to occur, or a change that could result in changes in the valuation of its capitalized assets in the accounting records, Contractor must notify MDCH Grants and Purchasing Division.
- (2) Contractor must also notify MDCH Grants and Purchasing Division within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.
- (3) Contractor must also notify MDCH Grants and Purchasing Division within 30 days whenever changes to company affiliations occur.



2.232 Call Center Disclosure

Contractor and/or all Subcontractors involved in the performance of the Contract providing call or contact center services to the State must disclose the location of its call or contact center services to inbound callers. Failure to disclose this information is a material breach of the Contract.

2.233 Bankruptcy

The State may, without prejudice to any other right or remedy, terminate the Contract, in whole or in part, and, at its option, may take possession of the "Work in Process" and finish the Works in Process by whatever appropriate method the State may deem expedient if:

- (a) the Contractor files for protection under the bankruptcy laws;
- (b) an involuntary petition is filed against the Contractor and not removed within 30 days;
- (c) the Contractor becomes insolvent or if a receiver is appointed due to the Contractor's insolvency;
- (d) the Contractor makes a general assignment for the benefit of creditors; or
- (e) the Contractor or its affiliates are unable to provide reasonable assurances that the Contractor or its affiliates can deliver the services under the Contract.

Contractor will fix appropriate notices or labels on the Work in Process to indicate ownership by the State. To the extent reasonably possible, materials and Work in Process must be stored separately from other stock and marked conspicuously with labels indicating ownership by the State.

2.240 Performance

2.241 Time of Performance

- (a) Contractor must use commercially reasonable efforts to provide the resources necessary to complete all Services and Deliverables according to the time schedules contained in the Statements of Work and other Exhibits governing the work, and with professional quality.
- (b) Without limiting the generality of **Section 2.241(a)**, Contractor must notify the State in a timely manner upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion of any Deliverables/Services on the scheduled due dates in the latest State-approved delivery schedule and must inform the State of the projected actual delivery date.
- (c) If the Contractor believes that a delay in performance by the State has caused or will cause the Contractor to be unable to perform its obligations according to specified Contract time periods, the Contractor must notify the State in a timely manner and must use commercially reasonable efforts to perform its obligations according to the Contract time periods notwithstanding the State's failure. Contractor will not be in default for a delay in performance to the extent the delay is caused by the State.

2.242 Service Level Agreements (SLAs)—Deleted/Not Applicable

2.243 Liquidated Damages—Deleted/Not Applicable

2.244 Excusable Failure

Neither party will be liable for any default, damage, or delay in the performance of its obligations under the Contract to the extent the default, damage or delay is caused by government regulations or requirements (executive, legislative, judicial, military, or otherwise), power failure, lightning, earthquake, war, water or other forces of nature or acts of God, delays or failures of transportation, equipment shortages, suppliers' failures, or acts or omissions of common carriers, fire; riots, civil disorders; strikes or other labor disputes, embargoes; injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of a party; provided the non-performing party and its Subcontractors are without fault in causing the default or delay, and the default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans.

If a party does not perform its contractual obligations for any of the reasons listed above, the non-performing party will be excused from any further performance of its affected obligation(s) for as long as the circumstances prevail. but the party must use commercially reasonable efforts to recommence



performance whenever and to whatever extent possible without delay. A party must promptly notify the other party in writing immediately after the excusable failure occurs, and also when it abates or ends.

If any of the above-enumerated circumstances substantially prevent, hinder, or delay the Contractor's performance of the Services/provision of Deliverables for more than 10 Business Days, and the State determines that performance is not likely to be resumed within a period of time that is satisfactory to the State in its reasonable discretion, then at the State's option: (a) the State may procure the affected Services/Deliverables from an alternate source, and the State is not be liable for payment for the unperformed Services/ Deliverables not provided under the Contract for so long as the delay in performance continues; (b) the State may terminate any portion of the Contract so affected and the charges payable will be equitably adjusted to reflect those Services/Deliverables terminated; or (c) the State may terminate the affected Statement of Work without liability to Contractor as of a date specified by the State in a written notice of termination to the Contractor, except to the extent that the State must pay for Services/Deliverables provided through the date of termination.

The Contractor will not have the right to any additional payments from the State as a result of any Excusable Failure occurrence or to payments for Services not rendered/Deliverables not provided as a result of the Excusable Failure condition. Defaults or delays in performance by Contractor which are caused by acts or omissions of its Subcontractors will not relieve Contractor of its obligations under the Contract except to the extent that a Subcontractor is itself subject to an Excusable Failure condition described above and Contractor cannot reasonably circumvent the effect of the Subcontractor's default or delay in performance through the use of alternate sources, workaround plans or other means.

2.250 Approval of Deliverables

2.251 Delivery Responsibilities—Deleted/Not Applicable

2.252 Delivery of Deliverables—Deleted/Not Applicable

2.253 Testing—Deleted/Not Applicable

2.254 Approval of Deliverables, In General—Deleted/Not Applicable

2.255 Process For Approval of Written Deliverables—Deleted/Not Applicable

2.256 Process for Approval of Services—Deleted/Not Applicable

2.257 Process for Approval of Physical Deliverables—Deleted/Not Applicable

2.258 Final Acceptance—Deleted/Not Applicable

2.260 Ownership

2.261 Ownership of Work Product by State

The State owns all Deliverables as they are works made for hire by the Contractor for the State. The State owns all United States and international copyrights, trademarks, patents, or other proprietary rights in the Deliverables.

2.262 Vesting of Rights

With the sole exception of any preexisting licensed works identified in the SOW, the Contractor assigns, and upon creation of each Deliverable automatically assigns, to the State, ownership of all United States and international copyrights, trademarks, patents, or other proprietary rights in each and every Deliverable, whether or not registered by the Contractor, insofar as any the Deliverable, by operation of law, may not be considered work made for hire by the Contractor for the State. From time to time upon the State's request, the Contractor must confirm the assignment by execution and delivery of the assignments, confirmations of assignment, or other written instruments as the State may request. The State may obtain and hold in its own name all copyright, trademark, and patent registrations and other evidence of rights that may be available for Deliverables.

2.263 Rights in Data

(a) The State is the owner of all data made available by the State to the Contractor or its agents, Subcontractors or representatives under the Contract. The Contractor must not use the State's data for any purpose other than providing the Services, nor will any part of the State's data be disclosed, sold, assigned, leased or otherwise disposed of to the general public or to specific third parties or commercially



exploited by or on behalf of the Contractor. No employees of the Contractor, other than those on a strictly need-to-know basis, have access to the State's data. Contractor must not possess or assert any lien or other right against the State's data. Without limiting the generality of this Section, the Contractor must only use personally identifiable information as strictly necessary to provide the Services and must disclose the information only to its employees who have a strict need-to-know the information. The Contractor must comply at all times with all laws and regulations applicable to the personally identifiable information.

(b) The State is the owner of all State-specific data under the Contract. The State may use the data provided by the Contractor for any purpose. The State must not possess or assert any lien or other right against the Contractor's data. Without limiting the generality of this Section, the State may use personally identifiable information only as strictly necessary to utilize the Services and must disclose the information only to its employees who have a strict need to know the information, except as provided by law. The State must comply at all times with all laws and regulations applicable to the personally identifiable information. Other material developed and provided to the State remains the State's sole and exclusive property.

2.264 Ownership of Materials

The State and the Contractor will continue to own their respective proprietary technologies developed before entering into the Contract. Any hardware bought through the Contractor by the State, and paid for by the State, will be owned by the State. Any software licensed through the Contractor and sold to the State, will be licensed directly to the State.

2.270 State Standards

2.271 Existing Technology Standards

The Contractor must adhere to all existing standards as described within the comprehensive listing of the State's existing technology standards at <http://www.michigan.gov/dmb/0,4568,7-150-56355-108233---00.html>.

2.272 Acceptable Use Policy

To the extent that Contractor has access to the State computer system, Contractor must comply with the State's Acceptable Use Policy, see http://www.michigan.gov/cybersecurity/0,1607,7-217-34395_34476---00.html. All Contractor employees must be required, in writing, to agree to the State's Acceptable Use Policy before accessing the State system. The State reserves the right to terminate Contractor's access to the State system if a violation occurs.

2.273 Systems Changes

Contractor is not responsible for and not authorized to make changes to any State systems without written authorization from the Project Manager. Any changes Contractor makes to State systems with the State's approval must be done according to applicable State procedures, including security, access, and configuration management procedures.

2.274 Electronic Receipt Processing Standard

All electronic commerce applications that allow for electronic receipt of credit/debit card and electronic check (ACH) transactions must be processed via the Centralized Electronic Payment Authorization System (CEPAS).

2.280 Extended Purchasing

2.281 MIDEAL—Deleted/Not Applicable

2.282 State Employee Purchases—Deleted/Not Applicable

2.290 Environmental Provision

2.291 Environmental Provision

Hazardous Materials:

For the purposes of this Section, "Hazardous Materials" is a generic term used to describe asbestos, ACBMs, PCBs, petroleum products, construction materials including paint thinners, solvents, gasoline, oil, and any other material the manufacture, use, treatment, storage, transportation, or disposal of which is regulated by the federal, State, or local laws governing the protection of the public health, natural



resources, or the environment. This includes, but is not limited to, materials such as batteries and circuit packs, and other materials that are regulated as (1) "Hazardous Materials" under the Hazardous Materials Transportation Act, (2) "chemical hazards" under the Occupational Safety and Health Administration standards, (3) "chemical substances or mixtures" under the Toxic Substances Control Act, (4) "pesticides" under the Federal Insecticide Fungicide and Rodenticide Act, and (5) "hazardous wastes" as defined or listed under the Resource Conservation and Recovery Act.

(a) The Contractor must use, handle, store, dispose of, process, transport and transfer any material considered a Hazardous Material according to all federal, State, and local laws. The State must provide a safe and suitable environment for performance of Contractor's Work. Before the commencement of Work, the State must advise the Contractor of the presence at the work site of any Hazardous Material to the extent that the State is aware of the Hazardous Material. If the Contractor encounters material reasonably believed to be a Hazardous Material and which may present a substantial danger, the Contractor must immediately stop all affected Work, notify the State in writing about the conditions encountered, and take appropriate health and safety precautions.

(b) Upon receipt of a written notice, the State will investigate the conditions. If (a) the material is a Hazardous Material that may present a substantial danger, and (b) the Hazardous Material was not brought to the site by the Contractor, or does not result in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Materials, the State must order a suspension of Work in writing. The State must proceed to have the Hazardous Material removed or rendered harmless. In the alternative, the State must terminate the affected Work for the State's convenience.

(c) Once the Hazardous Material has been removed or rendered harmless by the State, the Contractor must resume Work as directed in writing by the State. Any determination by the Michigan Department of Community Health or the Michigan Department of Environmental Quality that the Hazardous Material has either been removed or rendered harmless is binding upon the State and Contractor for the purposes of resuming the Work. If any incident with Hazardous Material results in delay not reasonable anticipatable under the circumstances and which is attributable to the State, the applicable SLAs for the affected Work will not be counted in **Section 2.242** for a time as mutually agreed by the parties.

(d) If the Hazardous Material was brought to the site by the Contractor, or results in whole or in part from any violation by the Contractor of any laws covering the use, handling, storage, disposal of, processing, transport and transfer of Hazardous Material, or from any other act or omission within the control of the Contractor, the Contractor must bear its proportionate share of the delay and costs involved in cleaning up the site and removing and rendering harmless the Hazardous Material according to Applicable Laws to the condition approved by applicable regulatory agency(ies).

Michigan has a Consumer Products Rule pertaining to labeling of certain products containing volatile organic compounds. For specific details visit http://www.michigan.gov/deq/0,1607,7-135-3310_4108-173523--,00.html

Refrigeration and Air Conditioning:

The Contractor must comply with the applicable requirements of Sections 608 and 609 of the Clean Air Act (42 U.S.C. 7671g and 7671h) as each or both apply to the Contract.

Environmental Performance:

Waste Reduction Program: Contractor must establish a program to promote cost-effective waste reduction in all operations and facilities covered by the Contract. The Contractor's programs must comply with applicable Federal, State, and local requirements, specifically including Section 6002 of the Resource Conservation and Recovery Act (42 U.S.C. 6962, et seq.).

2.300 Other Provisions

2.311 Forced Labor, Convict Labor, Forced or Indentured Child Labor, or Indentured Servitude Made Materials

Equipment, materials, or supplies, that will be furnished to the State under the Contract must not be produced in whole or in part by forced labor, convict labor, forced or indentured child labor, or indentured servitude.

"Forced or indentured child labor" means all work or service: exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer



himself voluntarily; or performed by any person under the age of 18 under a contract the enforcement of which can be accomplished by process or penalties.



Attachment A – Price Proposal

Number	Services	Contingency Fee Rate	Estimated Amount of Collections/Payments	Estimated Amount
A	B	C	D	E
				(C x D)
1	Overpayments Collected	10.0%	\$8,000,000	\$800,000
2	Discounted Overpayments - Self-Reported by Provider	7.5%	\$1,500,000	\$112,500
	One Year Total			\$912,500
	Three Year Total			\$2,737,500

**Attachment B- QIO Designation**

AWARD/CONTRACT		1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 350)		RATING		PAGE OF PAGES 1 185	
2. CONTRACT (Proc. Inst. Ident.) NO. HHSM-500-2011-MI10C				3. EFFECTIVE DATE 08/01/2011		4. REQUISITION/PURCHASE REQUEST/PROJECT NO. See Schedule	
5. ISSUED BY CODE CMS, OAGM, ASG, DQC 7500 SECURITY BLVD., MS: C2-21-15 BALTIMORE MD 21244-1850		ASG - DQC		8. ADMINISTERED BY (If other than Item 5) CODE Scott Filipovits Contract Specialist 410-786-5779		AGG/SF	
7. NAME AND ADDRESS OF CONTRACTOR (No., Street, City, Country, State and ZIP Code) MICHIGAN PEER REVIEW ORGANIZATION Attn: Robert Yellan 22670 HAGGERTY ROAD SUITE 100 FARMINGTON HILLS MI 48335-2611				8. DELIVERY <input type="checkbox"/> FOB ORIGIN <input checked="" type="checkbox"/> OTHER (See below)			
				9. DISCOUNT FOR PROMPT PAYMENT Net 15			
CODE 2484657300		FACILITY CODE		10. SUBMIT INVOICES (4 copies unless otherwise specified) TO THE ADDRESS SHOWN IN		ITEM G.2.A.2	
11. SHIP TO/MARK FOR CODE Not Applicable		N/A		12. PAYMENT WILL BE MADE BY CODE DHHS, CMS, OFM, AMG Div. of Financial Operations P.O. Box 7520 Baltimore MD 21207-0520		ACCT	
13. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: <input type="checkbox"/> 10 U.S.C. 2304 (c) () <input checked="" type="checkbox"/> 41 U.S.C. 253 (c) (5)				14. ACCOUNTING AND APPROPRIATION DATA See Schedule			
15A. ITEM NO	15B. SUPPLIES/SERVICES			15C. QUANTITY	15D. UNIT	15E. UNIT PRICE	15F. AMOUNT
Continued							
				15G. TOTAL AMOUNT OF CONTRACT \$15,591,278.00			
16. TABLE OF CONTENTS							
(X)	SEC.	DESCRIPTION	PAGE(S)	(X)	SEC.	DESCRIPTION	PAGE(S)
PART I - THE SCHEDULE				PART II - CONTRACT CLAUSES			
X	A	SOLICITATION/CONTRACT FORM	1	X	I	CONTRACT CLAUSES	179
X	B	SUPPLIES OR SERVICES AND PRICES/COSTS	9	PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.			
X	C	DESCRIPTION/SPECS./WORK STATEMENT	13	X	J	LIST OF ATTACHMENTS	184
X	D	PACKAGING AND MARKING	94	PART IV - REPRESENTATIONS AND INSTRUCTIONS			
X	E	INSPECTION AND ACCEPTANCE	95	K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS		
X	F	DELIVERIES OR PERFORMANCE	96	L	INSTRS., CONDS., AND NOTICES TO OFFERORS		
X	G	CONTRACT ADMINISTRATION DATA	125	M	EVALUATION FACTORS FOR AWARD		
X	H	SPECIAL CONTRACT REQUIREMENTS	151				
CONTRACTING OFFICER WILL COMPLETE ITEM 17 OR 18 AS APPLICABLE							
17. <input checked="" type="checkbox"/> CONTRACTOR'S NEGOTIATED AGREEMENT (Contractor is required to sign this document and return _____ copies to issuing office.) Contractor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified above and on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this award/contract, (b) the solicitation, if any, and (c) such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein. (Attachments are listed herein.)				18. <input type="checkbox"/> AWARD (Contractor is not required to sign this document.) Your offer on Solicitation Number _____ including the additions or changes made by you which additions or changes are set forth in full above, is hereby accepted as to the items listed above and on any condition sheets. This award consummates the contract which consists of the following documents: (a) the Government's solicitation and your offer, and (b) this award/contract. No further contractual document is necessary.			
19A. NAME AND TITLE OF SIGNER (Type or print)				20A. NAME OF CONTRACTING OFFICER NAOMI A. HANEY-CERESA			
19B. NAME OF CONTRACTOR		19C. DATE SIGNED		20B. UNITED STATES OF AMERICA		20C. DATE SIGNED	
BY (Signature of person authorized to sign)				BY (Signature of the Contracting Officer)			

NSN 7540-01-152-8069
PREVIOUS EDITION IS UNUSABLE

STANDARD FORM 26 (Rev. 4-85)
Prescribed by GSA
FAR (48 CFR) 53.214(a)



CONTINUATION SHEET	REFERENCE NO. OF DOCUMENT BEING CONTINUED HHSM-500-2011-MI10C	PAGE OF 2 185
---------------------------	--	------------------

NAME OF OFFEROR OR CONTRACTOR

MICHIGAN PEER REVIEW ORGANIZATION

ITEM NO. (A)	SUPPLIES/SERVICES (B)	QUANTITY (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)
	Tax ID Number: 38-2536610 DUNS Number: 121631113 Delivery: 07/31/2014 FOB: Destination Period of Performance: 08/01/2011 to 07/31/2014				
0001	Beneficiary Centered Care 10th SOW Obligated Amount: \$2,143,031.00 Requisition No: 601-1-Q230-01 Accounting Info: 15992605-7510/519-252Z Funded: \$2,143,031.00				2,143,031.00
0002	Clinical Quality Improvement & VBP 10th SOW Obligated Amount: \$4,432,040.00 Requisition No: 701-1-Q230-01 Accounting Info: 15992606-7510/519-252Z Funded: \$4,432,040.00				4,432,040.00
0003	SDPS, Coord Ctrs, & Spec. Initiatives Obligated Amount: \$359,333.00 Requisition No: 401-1-Q230-01 Accounting Info: 15992607-7510/519-252Z Funded: \$359,333.00				359,333.00
0004	Beneficiary Centered Care 10th SOW Obligated Amount: \$2,688,875.00 Requisition No: 601-1-Q230-02 Accounting Info: 15992605-7510/519-252Z Funded: \$2,688,875.00				2,688,875.00
0005	Clinical Quality Improvement & VBP 10th SOW Obligated Amount: \$5,118,492.00 Requisition No: 701-1-Q230-02 Accounting Info: 15992606-7510/519-252Z Funded: \$5,118,492.00				5,118,492.00
0006	SDPS, Coord Ctrs, & Spec. Initiatives Obligated Amount: \$849,507.00 Requisition No: 801-1-Q230-01 Continued ...				849,507.00

NSN 7540-01-152-8067

OPTIONAL FORM 336 (4-86)
Sponsored by GSA
FAR (48 CFR) 53.110



CONTINUATION SHEET	REFERENCE NO. OF DOCUMENT BEING CONTINUED HHSM-500-2011-MI10C	PAGE	OF
		3	185

NAME OF OFFEROR OR CONTRACTOR

MICHIGAN PEER REVIEW ORGANIZATION

ITEM NO. (A)	SUPPLIES/SERVICES (B)	QUANTITY (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)
	Accounting Info: 15992607-7510519-252Z Funded: \$849,507.00				

NSN 7540-01-152-8067


OPTIONAL FORM 336 (4-86)
Sponsored by GSA
FAR (48 CFR) 53.110



Attachment C – URAC Accreditation

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Michigan Peer Review Organization*

22670 Haggerty Road, Suite 100
Farmington Hills, MI 48335
mpro.org

Health Utilization Management

Accredited Sites:

- Michigan Peer Review Organization**
22670 Haggerty Road, Suite 100
Farmington Hills, MI 48335

Accreditation Information

DBA (Doing Business As) Names: MPRO

Accreditation Status: Full Accreditation

Accredited Since: 2002

Expiration Date: 11/1/2013

Books of Business not included: External Quality Review, DRG Review

Independent Review Organization

Accredited Sites:

- Michigan Peer Review Organization**
22670 Haggerty Road, Suite 100
Farmington Hills, MI 48335

Accreditation Information

DBA (Doing Business As) Names: MPRO

Accreditation Status: Full Accreditation

Accredited Since: 2002

Expiration Date: 11/1/2013

Books of Business not included: External Quality Reviews

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Attachment D – HIPPA Business Associate Addendum

The parties to this Business Associate Addendum (“Addendum”) are the State of Michigan, acting by and through the Department of Technology, Management and Budget, on behalf of the Department of Community Health (“State”) and Michigan Peer Review Organization, (“Contractor”). This Addendum supplements and is made a part of the existing contract(s) or agreement(s) between the parties including the following Contract(s): 391B3200006 (“Contract”).

For purposes of this Addendum, the State is (check one):

- (X) Covered Entity (“CE”)
 () Business Associate (“Associate”)

and Contractor is (check one):

- () Covered Entity (“CE”)
 (X) Business Associate (“Associate”)

RECITALS

- A. Under the terms of the Contract, CE wishes to disclose certain information to Associate, some of which may constitute Protected Health Information (“PHI”) (defined below). In consideration of the receipt of PHI, Associate agrees to protect the privacy and security of the information as set forth in this Addendum.
- B. CE and Associate intend to protect the privacy and provide for the security of PHI disclosed to Associate under the Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”) and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”) as amended by the Health Information Technology Economic and Clinical Health Act (“HITECH Act”) under the American Recovery and Reinvestment Act of 2009, Public Law 111-5 (“ARRA”), and other applicable laws, as amended.
- C. As part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) require CE to enter into a contract containing specific requirements with Associate before the disclosure of PHI, as set forth in, but not limited to, 45 CFR §§ 160.103, 164.402, 164.410, 164.502(e), 164.504(e), and 164.314 and contained in this Addendum.

In consideration of the mutual promises below and the exchange of information under this Addendum, the parties agree as follows:

1. **Definitions.**

- a. Except as otherwise defined herein, capitalized terms in this Addendum have the definitions set forth in the HIPAA Regulations at 45 CFR Parts 160, 162 and 164, as amended, including, but not limited to, subpart A, subpart C (“Security Rule”), subpart D (Breach Notification), and subpart E (“Privacy Rule”).
- b. **“Agreement”** means both the Contract and this Addendum.
- c. **“Breach”** means the unauthorized acquisition, access, use, or disclosure of Protected Health Information that compromises the security or privacy of the Protected Health Information as defined in 45 CFR 164.402.
- d. **“Contract”** means the underlying written agreement or purchase order between the parties for the goods or services to which this Addendum is added.
- e. **“Impermissible Use or Disclosure”** means the acquisition, access, use, or disclosure of Protected Health Information in a manner not permitted under HIPAA that may or may not compromise the security or privacy of the Protected Health Information.
- f. **“Protected Health Information” or “PHI”** has the meaning given to such term under the Privacy Rule and also means, by way of example and without limitation, any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.



g. "Protected Information" means PHI provided by CE to Associate or created or received by Associate on CE's behalf.

h. "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

2. Obligations of Associate.

a. Permitted Uses. Associate may not use Protected Information except for the purpose of performing Associate's obligations under the Contract and as permitted under this Agreement. Further, Associate cannot use Protected Information in any manner violates the HIPAA Regulations. Associate may use Protected Information: (i) for the proper management and administration of Associate in carrying out its duties under the Agreement; (ii) to carry out the legal responsibilities of Associate; or (iii) for Data Aggregation purposes for the Health Care Operations of CE. Additional provisions, if any, governing permitted uses of Protected Information are set forth in Appendix 1 to this Addendum.

b. Permitted Disclosures. Associate may not disclose Protected Information in any manner that would constitute a violation of the HIPAA Regulations if disclosed by CE, except that Associate may disclose Protected Information: (i) in a manner permitted under the Agreement; (ii) for the proper management and administration of Associate in carrying out its duties under the Agreement; (iii) as required by law; (iv) for Data Aggregation purposes for the Health Care Operations of CE; or (v) to report violations of law to appropriate federal or state authorities, consistent with 45 CFR § 164.502(j)(1). To the extent that Associate discloses Protected Information to a third party, Associate must obtain, before making any such disclosure: (i) reasonable assurances from such third party that such Protected Information will be held confidential as provided under this Addendum and only disclosed as required by law or for the purposes for which it was disclosed to such third party; and (ii) an agreement to implement reasonable and appropriate safeguards to protect the Protected Information; and (iii) an agreement from such third party to immediately notify Associate of any Impermissible Use, Disclosure, or Breach of the Protected Information, or any Security Incident, to the extent it has obtained knowledge of such an occurrence. Additional provisions, if any, governing permitted disclosures of Protected Information are set forth in Appendix 1.

c. Appropriate Safeguards. Associate must implement appropriate Security Measures as are necessary to protect against the use or disclosure of all forms of Protected Information other than as permitted by the Contract or this Addendum. Associate must maintain a comprehensive written information privacy and security program that includes Security Measures that reasonably and appropriately protect the Confidentiality, Integrity, and Availability of Protected Information relative to the size and complexity of the Associate's operations and the nature and scope of its activities. Security Measures include, without limitation, the valid encryption and password protection of Protected Information and of all portable electronic devices that store Protected Information regardless of the nature and scope of its activities.

d. Reporting of a Breach, Security Incident or Impermissible Use or Disclosure. During the term of the Contract or this Addendum, Associate must notify CE in writing within twenty-four (24) hours of any suspected or actual Breach, Security Incident, or Impermissible Use or Disclosure. Associate must also take (i) prompt corrective action to cure any such event and (ii) any action required by applicable federal and state laws and regulations. Associate will cooperate with CE to mitigate the effects on any Breach, Security Incident, or Impermissible Use or Disclosure. Associate will document the incident and its outcome and will retain such documentation no less than five (5) years.

e. Notification. If a Breach, Security Incident, Impermissible Use or Disclosure occurs, and the PHI is under the control of the Associate or its subcontractor or its agent, the Associate must notify the affected individuals and is responsible for paying the costs associated with the Breach, Security Incident, Impermissible Use or Disclosure and subsequent notification to affected individuals. The Associate will cooperate with the CE in sending out any notification relating to a Breach, Security Incident, or Impermissible Use or Disclosure.

f. Associate's Agents. If Associate uses one or more subcontractors or agents to provide services under this Agreement, and such subcontractors or agents receive or have access to Protected Information, each subcontractor or agent must sign an agreement with Associate containing substantially the same provisions as this Addendum and further identifying CE as a third party beneficiary of the agreement with such subcontractors or agents in the event of any violation of such subcontractor or agent agreement. Associate must (i) implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions; (ii) mitigate the effects of any such violation; and (iii) be responsible for any activities and costs associated with carrying out any Breach Notification for which an agent or subcontractor is responsible.

g. Access to Protected Information. Associate must make available Protected Information maintained by Associate or its agents or subcontractors in Designated Record Sets to CE for inspection and copying within ten



days of a request by CE to enable CE to fulfill its obligations to permit individual access to PHI under the Privacy Rule, including, but not limited to, 45 CFR § 164.524.

h. Amendment of PHI. Within ten days of receipt of a request from CE for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, Associate or its agents or subcontractors must make such Protected Information available to CE for amendment and incorporate any such amendment to enable CE to fulfill its obligations with respect to requests by individuals to amend their PHI under the Privacy Rule, including, but not limited to, 45 CFR § 164.526. If any individual requests an amendment of Protected Information directly from Associate or its agents or subcontractors, Associate must notify CE in writing within ten days of receipt of the request, and then, in that case, only the CE may either grant or deny the request.

i. Accounting Rights. Within ten days of notice by CE of a request for an accounting of disclosures of Protected Information, Associate and its agents or subcontractors must make available to CE the information required to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR § 164.528. As set forth in, and as limited by, 45 CFR § 164.528, Associate is not required to provide an accounting to CE of disclosures made: (i) to carry out treatment, payment or health care operations, as set forth in 45 CFR § 164.506; (ii) to individuals of Protected Information about them as set forth in 45 CFR § 164.502; (iii) under an authorization as provided in 45 CFR § 164.508; (iv) to persons involved in the individual's care or other notification purposes as set forth in 45 CFR § 164.510; (v) for national security or intelligence purposes as set forth in 45 CFR § 164.512(k)(2); or (vi) to correctional institutions or law enforcement officials as set forth in 45 CFR § 164.512(k)(5). Associate agrees to implement a process that allows for an accounting to be collected and maintained by Associate and its agents or subcontractors for at least six years before the request, but not before the compliance date of the Privacy Rule. At a minimum, such information must include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. If the request for an accounting is delivered directly to Associate or its agents or subcontractors, Associate must forward it within ten days of the receipt of the request to CE in writing. CE must prepare and deliver any such accounting requested. Associate may forward it not disclose any Protected Information except as set forth in Section 2(b) of this Addendum.

j. Governmental Access to Records. Associate must make available its internal practices, books and records relating to the use and disclosure of Protected Information to the Secretary of the U.S. Department of Health and Human Services (the "Secretary"), in a time and manner designated by the Secretary, for purposes of determining CE's compliance with the HIPAA Regulations. Associate must provide to CE a copy of any Protected Information that Associate provides to the Secretary concurrently with providing such Protected Information to the Secretary.

k. Minimum Necessary. Associate (and its agents or subcontractors) must comply with the Minimum Necessary requirements of the Privacy Rule, including, but not limited to 45 CFR §§ 164.502(b) and 164.514(d), by requesting, using, and disclosing only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use or disclosure.

l. Data Ownership. Unless otherwise specified in the Contract, Associate acknowledges that Associate has no ownership rights with respect to the Protected Information. The CE retains all ownership rights of the Protected Information.

m. Retention of Protected Information. Notwithstanding Section 5(d) of this Addendum, Associate and its subcontractors or agents must retain all Protected Information throughout the term of the Contract and must continue to maintain the information required under Section 2(h) of this Addendum for a period of six years from the date of creation or the date when it last was in effect, whichever is later, or as required by law. This obligation survives the termination of the Contract.

n. Destruction of Protected Information. Associate agrees to implement policies and procedures for the final disposition of electronic Protected Information and the hardware and equipment on which it is stored, including but not limited to, removal before re-use, as well as paper or other hard copy media, in accordance with the most recent guidance from the Department of Health and Human Services' Secretary.

o. Audits, Inspection and Enforcement. Within ten days after a written request by CE, Associate and its agents or subcontractors must allow CE to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of Protected Information under this Addendum for the purpose of determining whether Associate has complied with this Addendum; provided, however, that: (i) Associate and CE must mutually agree in advance upon the scope, timing and location of such an inspection; (ii) CE must protect the confidentiality of all confidential and proprietary information of Associate to which CE has access during the course of such inspection; and (iii) CE or Associate must execute a nondisclosure agreement, if requested by Associate or CE. The fact that CE inspects, or fails to inspect, or has the right to inspect, Associate's



facilities, systems, books, records, agreements, policies and procedures does not relieve Associate of its responsibility to comply with this Addendum. CE's (i) failure to detect or (ii) detection, but failure to notify Associate or require Associate's remediation of any unsatisfactory practices, does not constitute acceptance of such practice or a waiver of CE's enforcement rights under this Agreement.

p. Safeguards During Transmission. Associate is responsible for using Security Measures to reasonably and appropriately maintain and ensure the Confidentiality, Integrity, and Availability of Protected Information transmitted to or on behalf of CE under this Agreement, in accordance with the standards and requirements of the HIPAA Regulations, until such Protected Information is received by CE or the intended recipient, and in accordance with any specifications set forth in Appendix 1.

3. Obligations of CE.

a. Safeguards During Transmission. CE is responsible for using Security Measures to reasonably and appropriately maintain and ensure the Confidentiality, Integrity, and Availability of Protected Information transmitted to Associate under this Agreement, in accordance with the standards and requirements of the HIPAA Regulations, until such Protected Information is received by Associate, and in accordance with any specifications set forth in Appendix 1.

b. Notice of Changes. CE must provide Associate with a copy of its notice of privacy practices produced in accordance with 45 CFR § 164.520, as well as any subsequent changes or limitation(s) to such notice, to the extent such changes or limitations may effect Associate's use or disclosure of Protected Information. CE must provide Associate with any changes in, or revocation of, permission to use or disclose Protected Information, to the extent it may affect Associate's permitted or required uses or disclosures. To the extent that it may affect Associate's permitted use or disclosure of Protected Information, CE must notify Associate of any restriction on the use or disclosure of Protected Information that CE has agreed to in accordance with 45 CFR § 164.522.

4. Term. This Addendum must continue in effect as to each Contract to which it applies until such Contract is terminated or is replaced with a new contract between the parties containing provisions meeting the requirements of the HIPAA Regulations, whichever first occurs. However, certain obligations will continue as specified in this Addendum.

5. Termination.

a. Material Breach. In addition to any other provisions in the Contract regarding breach, a breach by Associate of any provision of this Addendum, as determined by CE, constitutes a material breach of the Agreement and is grounds for termination of the Contract by CE under the provisions of the Contract covering termination for cause. If the Contract contains no express provisions regarding termination for cause, the following apply to termination for breach of this Addendum, subject to 5.b.:

(1) Default. If Associate refuses or fails to timely perform any of the provisions of this Addendum, CE may notify Associate in writing of the non-performance, and if not corrected within thirty days, CE may immediately terminate the Agreement. Associate must continue performance of the Agreement to the extent it is not terminated.

(2) Associate's Duties. Notwithstanding termination of the Agreement, and subject to any directions from CE, Associate must timely, reasonably and necessarily act to protect and preserve property in the possession of Associate in which CE has an interest.

(3) Compensation. Payment for completed performance delivered and accepted by CE must be at the Contract price.

(4) Erroneous Termination for Default. If, after the CE terminates the Contract because of the Associate's default, it is determined, for any reason, that Associate was not in default, or that Associate's action/inaction was excusable, such termination will be treated as a termination for convenience, and the rights and obligations of the parties will be the same as if the contract had been terminated for convenience, as described in this Addendum or in the Contract.

b. Reasonable Steps to Cure Breach. If CE knows of a pattern of activity or practice of Associate that constitutes a material breach or violation of the Associate's obligations under the provisions of this Addendum or another arrangement and does not terminate this Agreement under Section 5(a), then CE must take reasonable steps to cure such breach or end such violation, as applicable. If CE's efforts to cure such breach or end such violation are unsuccessful, CE must either (i) terminate this Agreement, if feasible or (ii) if termination of this Agreement is not feasible, CE must report Associate's breach or violation to the Secretary of the Department of Health and Human Services.



c. Effect of Termination.

(1) Except as provided in paragraph (2) of this subsection, upon termination of this Agreement, for any reason, Associate must return or destroy all Protected Information that Associate or its agents or subcontractors still maintain in any form, and must retain copies of such Protected Information. If Associate elects to destroy the Protected Information, Associate must certify in writing to CE that such Protected Information has been destroyed.

(2) If Associate believes that returning or destroying the Protected Information is not feasible, including but not limited to, a finding that record retention requirements provided by law make return or destruction infeasible, Associate must promptly provide CE written notice of the conditions making return or destruction infeasible. Upon mutual agreement of CE and Associate that return or destruction of Protected Information is infeasible, Associate must continue to extend the protections of Sections 2(a), 2(b), 2(c), 2(d), 2(e) and 2(f) of this Addendum to such information, and must limit further use of such Protected Information to those purposes that make the return or destruction of such Protected Information infeasible.

6. No Waiver of Immunity. No term or condition of this Agreement must be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Michigan Governmental Immunity Act, MCL 691.1401, *et seq.*, the Federal Tort Claims Act, 28 U.S.C. 2671 *et seq.*, or the common law, as applicable, as now in effect or hereafter amended.

7. Disclaimer. CE makes no warranty or representation that compliance by Associate with this Addendum, HIPAA or the HIPAA Regulations will be adequate or satisfactory for Associate's own purposes. Associate is solely responsible for all decisions made by Associate regarding the safeguarding of Protected Information and PHI.

8. Certification. To the extent that CE determines an examination is necessary in order to comply with CE's legal obligations under HIPAA relating to certification of its security practices, CE or its authorized agents or contractors, may, at CE's expense, examine Associate's facilities, systems, procedures and records as may be necessary for such agents or contractors to certify to CE the extent to which Associate's security safeguards comply with HIPAA, the HIPAA Regulations or this Addendum.

9. Amendment.

a. Amendment to Comply with Law. The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of this Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the Privacy Rule, the Security Rule and other applicable laws relating to the security or privacy of Protected Information. The parties understand and agree that CE must receive satisfactory written assurance from Associate that Associate will adequately safeguard all Protected Information. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the Privacy Rule, the Security Rule or other applicable laws. CE may terminate the Agreement upon thirty days written notice if (i) Associate does not promptly enter into negotiations to amend this Agreement when requested by CE under this Section or (ii) Associate does not enter into an amendment to this Agreement providing assurances regarding the safeguarding of PHI that CE, in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA, the HIPAA Regulations and other applicable laws.

b. Amendment of Appendix 1. Appendix 1 may be modified or amended by mutual agreement of the parties in writing from time to time without formal amendment of this Addendum.

10. Assistance in Litigation or Administrative Proceedings. Associate must make itself, and any subcontractors, employees or agents assisting Associate in the performance of its obligations under this Agreement, available to CE, at no cost to CE, to testify as witnesses, or otherwise, if someone commences litigation or administrative proceedings against CE, its directors, officers or employees, departments, agencies, or divisions based upon a claimed violation of HIPAA, the HIPAA Regulations or other laws relating to security and privacy of Protected Information, except where Associate or its subcontractor, employee or agent is a named adverse party.

11. No Third Party Beneficiaries. Nothing express or implied in this Addendum is intended to confer any rights, remedies, obligations or liabilities upon any person other than CE, Associate and their respective successors or assigns.

12. Effect on Contract. Except as specifically required to implement the purposes of this Addendum, or to the extent inconsistent with this Addendum, all other terms of the Contract must remain in force and effect. The parties expressly acknowledge and agree that sufficient mutual consideration exists to make this Addendum legally binding



in accordance with its terms. Associate and CE expressly waive any claim or defense that this Addendum is not part of the Contract.

13. Interpretation and Order of Precedence. This Addendum is incorporated into and becomes part of the Contract. Together, this Addendum and each separate Contract constitute the "Agreement" of the parties with respect to their Business Associate relationship under HIPAA and the HIPAA Regulations. The provisions of this Addendum must prevail over any provisions in the Contract that may conflict or appear inconsistent with any provision in this Addendum. This Addendum and the Contract must be interpreted as broadly as necessary to implement and comply with HIPAA and the HIPAA Regulations. The parties agree that any ambiguity in this Addendum must be resolved in favor of a meaning that complies and is consistent with HIPAA and the HIPAA Regulations. This Addendum supercedes and replaces any previous separately executed HIPAA addendum between the parties. If this Addendum conflicts with the mandatory provisions of the HIPAA Regulations, then the HIPAA Regulations control. Where the provisions of this Addendum differ from those mandated by the HIPAA Regulations, but are nonetheless permitted by the HIPAA Regulations, the provisions of this Addendum control.

14. Effective Date. This Addendum is effective upon receipt of the last approval necessary and the affixing of the last signature required.

15. Survival of Certain Contract Terms. Notwithstanding anything in this Addendum to the contrary, Associate's obligations under Section 5(d) and record retention laws ("Effect of Termination") and Section 13 ("No Third Party Beneficiaries") survive termination of this Agreement and are enforceable by CE if the Associate fails to perform or comply with this Addendum.

16. Representatives and Notice.

a. Representatives. For the purpose of this Agreement, the individuals identified in the Contract must be the representatives of the respective parties. If no representatives are identified in the Contract, the individuals listed below are hereby designated as the parties' respective representatives for purposes of this Agreement. Either party may from time to time designate in writing new or substitute representatives.

b. Notices. All required notices must be in writing and must be hand delivered or given by certified or registered mail to the representatives at the addresses set forth below.

Covered Entity Representative:

Name: Kim Stephen
Title: Director, Bureau of Budget and Audit
Department and Division: Michigan Department of Community Health
Address: 320 S. Walnut Street
Lansing, Michigan 48913

Business Associate Representative:

Name: Robert Yellan
Title: President & CEO
Department and Division: Michigan Peer Review Organization
Address: 22670 Haggarty Road
Farmington Hills, Michigan 48335

Any notice given to a party under this Addendum must be deemed effective, if addressed to such party, upon: (i) delivery, if hand delivered; or (ii) the third (3rd) Business Day after being sent by certified or registered mail.

IN WITNESS WHEREOF, the parties hereto have duly executed this Addendum as of the Addendum Effective Date.

Associate	Covered Entity
[INSERT NAME]	[INSERT NAME]
By: _____	By: _____
Date: _____	Date: _____
Print Name: _____	Print Name: _____
Title: _____	Title: _____